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THE CONSTITUTION OF THE ITALIAN REPUBLIC

MARIO EINAUDI

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At the beginning of 1948, Italy's first republican constitution went into effect. After exactly a century, the *Statuto* of 1848 was finally and formally superseded. History will record that the *Statuto* proved a powerful instrument in the formation of Italian unity and in the development of Italy's freedoms and parliamentary system until 1922, just as it will also be a witness to its rejection and nullification in the course of the subsequent twenty-five years. The new republican constitution represents the first deliberate effort by the Italian people as a whole to guarantee their freedom and common welfare within a constitutional framework.

The influences of many lands are visible in the document. One can see in the rebirth of regionalism the native historical tradition of municipal freedom; the French fear of Caesarism reflected in election of the president by Parliament rather than by the people; British reliance on a balance of power between executive and legislature translated into the almost unlimited executive power of dissolution of the chambers; the time-honored American principle of bicameralism accepted with the creation of two legislative houses of equal power; and the equally famous American doctrine of judicial review tentatively imitated through the establishment of a Constitutional Court. Of Eastern constitutionalism there are only scant traces, the new social and economic rights reflecting rather the general trends of the times than any overt allegiance to the tenets of the Soviet constitution. Indeed, the acceptance of the new has been tempered by a strong restatement of what is valid in the individualistic and liberal traditions of the eighteenth and nineteenth centuries.

The constitution is a result of much thought and effort, and of an

attempt to learn from the mistakes of others. The Bonapartist régimes, the Weimar experiment, as well as the fate of the first French constitutional project of 1946—all were considered. The learning displayed over a period of eighteen months by the relatively few who took an effective hand in the proceedings was impressive; the question of whether necessity should be considered a constitutional source of law was fully debated. Continuous reference was made in the many thousand pages of debates to the classical political philosophers from Aristotle to Montesquieu and Rousseau. During the debate on bicameralism, Hamilton, Robespierre, Napoleon, Siéyès, Proudhon, Mirabeau, Mill, Pitt, Blum, Mazzini, Cavour, and Sorel were quoted, not to mention Duguit, Lees-Smith, Giraud, and Kelsen. The Communists called in the authority of George Washington and relied on Benjamin Franklin to weaken the argument for an upper chamber, while the Christian Democrats quoted at length the authority of Stalin to support the thesis that the two chambers had to be of equal power.

1. 1947 vs. 1946

Every constitution reflects not only the relative strength of the contending political forces within the Assembly which writes it, but also the political climate of the country at large, and of the community of nations within which the country moves. The Italian constitution is a good example of this truth. In no other way could many of the changes which occurred between the draft constitution, largely prepared in 1946, and the final constitution, debated and approved in the course of 1947, be explained. In the final bill of rights, some of the formulae so cherished by the constitution-makers in the people's and workers' republics of the East, and which had been accepted in the constitutional draft, have disappeared, while the political rights of citizens have been strengthened. The executive emerges with more power, and the independence of the Constitutional Court is guaranteed more securely. All these changes represent Communist defeats; while the Christian Democratic retreat from a corporativist and regionalist stand must be viewed as a victory of classical Italian liberal beliefs and of common sense.

The most serious encroachment of Eastern constitutionalism was found in Article 32 of the draft, which conditioned the exercise of political rights upon the fulfillment of some activity or function

contributing to the material or spiritual development of society. Thus the enjoyment of political rights could be seriously curtailed for any citizen, depending upon the interpretation which successive governments might give of what constitutes an appropriate activity. In the final text, this condition is eliminated. A number of other changes reveal the gradual decrease in the influence of the Marxist parties. Trade unions must be democratically organized before they can get recognition by the state. No longer have all workers the right to strike; instead, the right is to be exercised only within the sphere of the laws regulating it. The latifundia are not to be abolished, but transformed. The workers do not have a right to participate in the management of their plants, but only a right to collaborate in such management, taking into account the interests of production. Schools are open, not to the "people," but to "all." Private agencies have not the mere faculty, but the right, to open schools, even though no burden may accrue to the state. No longer are children born out of wedlock entitled to a juridical status equal to that of legitimate children, nor have parents the same duties toward them; they are entitled merely to support and to every protection compatible with the rights of legitimate offspring. The only Christian Democratic defeat in this area came when the final constitutional text no longer proclaimed the indissolubility of marriage. The ringing declaration of the draft that when the power of government violates fundamental freedoms and the rights guaranteed by the constitution, resistance to oppression becomes the right and duty of citizens, was quietly dropped — as it was in France in the second constitutional project.

In the legislative field, on the other hand, the corporativist efforts of the Christian Democrats met final defeat. The Senate, instead of being elected one-third by regional councils and two-thirds by universal suffrage, is to be elected entirely by universal suffrage. Referenda are now possible, under certain circumstances and for certain types of legislation, only to repeal existing laws and not to suspend the enactment of new ones.

The resolution to strengthen the executive power, notwithstanding the stubborn and clever opposition of the Communists, is apparent throughout. Executive decree laws, which had not been admitted in the draft, are legitimized in the final text, even though only in extraordinary cases of necessity and urgency, and under rigid conditions. While the draft was silent on the matter, the final

text authorizes the president of the Republic to send back to the chambers, within the time limit allowed him for promulgation and with a motivated message, any bill of which he disapproves. Presidential promulgation must follow if the bill is again approved by the chambers. The president's influence and power are extended into two new fields about which the draft said nothing: the president can send messages to the chambers and he must authorize the presentation of government bills to the chambers. In one respect, the president's power was curtailed: his otherwise unlimited power of dissolution of the legislative bodies cannot be exercised during his last six months of office.

The Christian Democrats had to yield on important points as far as regionalism was concerned. The complicated hierarchy of regional powers, which the draft classified as exclusive, concurrent, and complementary, was abandoned and no powers at all were given to the regions in the previously admitted fields of industry, trade, commerce, mines, credit controls, public education, and health. The Liberal-Communist alliance held fast and succeeded in maintaining that the Italian Constituent Assembly of 1947 could not take away from the jurisdiction of the central government areas of public power which the Philadelphia Convention of 1787 had already recognized as necessary for the survival of a federal government. The generosity of the draft toward regional finances was modified, and state revenues were allocated to the regions not for "essential" but for "normal" purposes. The already great power of the central government in dissolving regional councils was increased when it was added that the councils might be dissolved for reasons of national security. The dissolution was no longer to be proclaimed by the president with the concurrent advice of the Senate, but by the president, having heard a mixed parliamentary committee. Furthermore, the number of regions was reduced from twenty-two to nineteen, and the creation of new regions in future made twice as difficult.

Some of the changes introduced in the structure and jurisdiction of the Constitutional Court will strengthen its authority and independence. The tenure of the justices was increased from nine to twelve years. The indeterminate membership was changed to a fixed one of fifteen justices. The appointment of the justices which the draft left to Parliament (with the selections required to be one-half from magistrates, one-fourth from lawyers and law professors,

and one-fourth from citizens eligible for public office) has now been left, in equal measure, to the president of the Republic, to Parliament, and to the higher courts; and the choice will be limited to magistrates, law professors, and lawyers.

II. BICAMERALISM AND REPRESENTATION

One of the characteristics setting the Italian constitution apart from other postwar constitutions is the acceptance of the bicameral system. Article 55 reads: "The Parliament is composed of the Chamber of Deputies and of the Senate of the Republic." In itself, the bicameral idea did not meet with strong opposition, even though the Socialists and Communists declared against it in principle. No such agreement was possible, however, when the jurisdiction and the method of election of the two legislative bodies had to be determined.

The Christian Democrats, together with the Liberals, were the main champions of the absolute equality of powers of the two chambers as eventually written into Article 70 ("The legislative function is exercised collectively by the two Chambers") and Article 94 ("The Government must have the confidence of the two Chambers"). A bicameral system was needed, they said, to give balance to the legislative process, greater maturity to legislative debate, and, quite as important, greater stability to parliamentary government. This last aim could not be achieved unless the two chambers were of equal powers.[1] Nor could the goal of true regionalism be attained if the upper chamber, originally intended to be, in part at least, a regional body, was placed from the beginning in a condition of inferiority.[2] In 1936, Stalin himself had supported the concept of parity between the two Soviets.[3] Not even the authority of Stalin disarmed Communist opposition to parity of powers; but when trying to write into the constitution the principle that the government should enjoy the confidence only of the

[1] Piccioni, Assemblea Costituente, *Debates*, Sept. 17, 1947, p. 266.

[2] Mortati, A. C., *Debates*, Sept. 18, 1947, p. 307.

[3] Tosato, A. C., *Debates*, Sept. 19, 1947, p. 343: "The Soviet constitutional commission of 1936 debated whether or not a bicameral system should be adopted and whether or not the Soviet of the Union and the Soviet of Nationalities should be placed on a footing of equality. Stalin opposed the current which denied equality, by pointing out that by giving unequal powers to the two houses conflicts between them would not be eliminated but increased, and that what eliminates legislative conflicts is parity and an equal democratic basis."

Chamber of Deputies the party continued in a minority.[4] As the constitution stands, it does not provide for any procedure whereby conflicts between the two chambers can be solved. As in the United States, the normal procedure will be discussion between committees of the two chambers and compromise. In case of absolute deadlock on an important issue, one or both of the chambers can be dissolved by the president. The matter appears a purely theoretical one for the next several years, given the essentially similar political composition of the two chambers as a result of the elections of 1948.

Acceptance of parity did not solve the other major issue of how to elect the upper chamber. The easy agreement reached on the Chamber of Deputies (Article 56: "The Chamber of Deputies is elected by universal and direct suffrage . . . ") could not be realized for the Senate because of revival by the Christian Democrats of their traditional doctrine of interest representation. To a Constituent Assembly chosen for creating a new democratic structure on the ruins of dictatorship, the idea of interest representation appeared too much like an effort to resurrect fascist corporativism. The Christian Democrats refused to concede the parallel, pointing out that a substantial body of socialist and syndicalist doctrine had favored the idea of interest representation in the last fifty years, and that within a constitutional framework the idea was not incompatible with the idea of democracy. The representation of economic groups, divided into the major categories of agriculture, industry, trade, academic bodies, professions, artisans, white-collar workers, and civil servants, was needed to integrate universal suffrage and to implement the limited rôle of political parties which were to dominate the stage in the Chamber of Deputies. In a bitter attack on political parties, a Christian Democratic deputy said: "Italian parties lack a strong attachment to the ideas of freedom; they are followed by an exceedingly small minority of the population, while the great mass is foreign to them. For this reason, political parties are dogmatic and fail to reflect the true needs of the country. Parties have as yet been unable to give birth to a technical and political aristocracy capable of meeting the difficult and specialized tasks of government."[5]

This De Gaullist attack on political parties was not well received,

[4] See the Communist motion to this effect, A. C., *Debates*, Sept. 18, 1947, pp. 294–5.

[5] Mortati, A. C., *Debates*, Sept. 18, 1947, p. 305. The main Christian Democratic

and all subsequent Christian Democratic attempts to secure an even partial recognition of interest representation were defeated. Parity had been admitted, but the Marxist parties were determined to make the second chamber as exact a duplicate of the first as possible, so that from the upper chamber no important opposition could originate to the policies of the lower one. In the end, however, the constitution provided for some small differences. Each region was given at least six senators (except Valle d'Aosta, which gets one), and the term of the Senate was extended to six years, while that of the Chamber remained at five. While both deputies and senators are to be elected by universal and direct suffrage, their electors are, respectively, those who have attained their twenty-first and their twenty-fifth birthdays. The theory that by raising the age limit one could expect to have an electoral body endowed with a greater sum total of wisdom, and therefore presumably less inclined to vote for the Left, was disproved by the elections of 1948, when the percentage of Communist Front votes was practically the same in both the Senate and the Chamber elections. A more significant difference, not contained in the constitution, arises from the different electoral laws adopted for the two houses. The Chamber of Deputies is elected by proportional representation with a limited use of surpluses by national lists. The Senate is elected on the basis of a hybrid system whereby candidates stand initially for election in single-member constituencies and those of them who obtain at least sixty-five per cent of the total vote cast in their constituency are elected. The constituencies where no candidate has obtained that percentage are pooled regionally, candidates are grouped on party lists, and a proportional representation system, without national lists, is applied from that point on.

III. PRESIDENT AND EXECUTIVE

In the sphere of executive powers, the constitution had to solve three major problems: first, definition of the extent and of the na-

motion on the issue of interest representation was, in part, as follows: "The Constituent Assembly—considering that a second Chamber, in addition to one elected by universal suffrage, is required for the integration of political representation, so as to reflect social reality in all its politically significant interests and to guarantee to legislative work, which is of an ever-increasing technical character, the assistance of experts—resolves that these aims are to be reached by securing the participation in the second Chamber of the groups in which social activities spontaneously divide themselves." A. C., *Debates*, Sept. 17, 1947, p. 265. The decisive vote on this motion took place on September 23, when it was rejected by 213 to 166, with practically only the Christian Democrats voting in favor of it.

ture of presidential powers; second, establishment of a balance between the executive and the legislative powers; and third, definition of the position of the cabinet.

The members of the Constituent Assembly had to keep in mind that the Monarchy was gone and that the Republic was not to be of the presidential type. Under the Republic, the three main provisions of the constitution of 1848 relating to the royal powers were no longer applicable. These were that the power of legislation belonged collectively to the chambers and to the king, that executive power belonged to the king, and that justice issued from the king. Indeed, traditions of parliamentary government which had been established ever since the second half of the nineteenth century had already emptied these formulae of any substantial content. But while the English monarchy and the American presidency could not be used as prototypes, neither could the French presidency offer much help; for from the very first the Christian Democrats made it clear that they wanted a stronger president than had been given to the French people. Furthermore, the principle of the irresponsibility of the president, except for treason or violation of the constitution, was too firmly established to permit granting the president any powers based on the prerogative of his office. The constitution therefore states, in Article 89: "No act of the President of the Republic is valid unless countersigned by the Ministers proposing it, who assume responsibility for it."

With these requirements in mind, the constitution has made these main provisions for the office of the president. The president is elected for a period of seven years by the Chamber of Deputies and the Senate, meeting together as the Parliament, with the participation of three delegates for each region in order to guarantee a somewhat broader electoral basis.[6] Unlike the French constitution, which permits the president to be reëlected once, the Italian constitution is silent on this point. According to Article 83, the election of the president "takes place by secret ballot and requires a two-thirds majority of the Assembly. After the third ballot, an absolute majority is sufficient." The French constitution left the whole matter to decision by the Parliament meeting for the presidential

[6] For the election of the first president, however, only members of Parliament were present, since there had been no time to choose the regional representatives. This was in accordance with Art. 2 of the transitional arrangements of the constitution.

election; and the decision was in favor of secret ballot and absolute majority. Both countries, therefore, seem to have agreed that the manipulations made possible by the secret vote are less damaging to a real freedom of choice than the compulsion of a public vote.

The constitution proclaims the president head of the state and representative of national unity, but not the protector of the constitution as urged from several quarters. As such, he has powers of appointment, in specified cases, of accrediting and receiving diplomatic representatives, of declaring a state of war upon decision of the chambers. He also has command of the armed forces—a function which the French constitution splits between the prime minister, who directs the armed forces, and the president of the Republic, who has the title of commander of the armies.

Even though the chairman of the constitutional committee denies that the president is part of the legislative power,[7] the constitution gives him various means of influencing the legislative process. The President can only "promulgate" and not "sanction" laws; but he may (Article 74), "by means of a motivated message, request a new decision of the Chambers." He has, under normal circumstances, thirty days in which to exercise this suspensive veto, as against the ten days allotted to the French president. No special majority is required to override this suspensive veto, and if the chambers again approve the law it must be promulgated. Apart from this power, which is to be exercised with reference to specific bills, the president may send messages to the chambers. In the course of the debate, the messages of the president of the United States were recalled as an example of the type of leadership expected from the president in times of emergency or whenever important issues are expected to come before Parliament.[8] One presidential function which appears in the French constitution, that of presiding at cabinet meetings and of setting up and keeping minutes, is not to be found in the Italian constitution. But the Italian president is given the power of authorizing the presentation to the chambers of bills initiated by the government—a function, however, which must be considered largely of a formal nature.

In the appointment of a prime minister and, upon his recommendation, of the ministers, the president will exercise one of his more important executive powers. Yet another difference between

[7] Ruini, A. C., *Debates*, Oct. 23, 1947, p. 1467.
[8] A. C., *Debates*, Oct. 22, 1947, pp. 1444, 1446.

the French and Italian constitutions is to be found here. The French president can at first merely nominate the prime minister and must wait upon a vote of confidence by the National Assembly toward the prime minister and his program before appointing him to office. On the other hand, the appointment of the cabinet by the Italian president is final, from a constitutional point of view, even before the cabinet presents itself before the chambers to seek the confidence which it of course must have to continue in office. The two different solutions reflect the initial French premise that the choice of the prime minister belongs exclusively to the legislative power, and the Italian effort to establish as far as possible the independence of the executive, quite apart from the issue of responsibility toward the representatives of the people. Were shifting parliamentary majorities to prove the rule, it is not too difficult to anticipate quite different parliamentary reactions when the prime minister presents himself alone and as a beggar, or when he presents himself surrounded by a fully formed cabinet.

The attempted strengthening of the executive in its relationship with the legislature is quite visible in Article 88 dealing with the crucial dissolution issue. The article reads: "The President of the Republic may, having heard their respective presidents, dissolve both Chambers or only one of them. He may not exercise such power within the last six months of his term." If the attempts of a Christian Democratic group to have the dissolution power proclaimed a presidential prerogative to be exercised independently of the advice of the prime minister[9] failed, so did the Communist effort to curtail this power. The Communists had offered as their solution an exact duplicate of Article 51 of the French constitution,[10] barring dissolution during the first eighteen months following election of the Chamber, and after that making it possible only when two ministerial crises had occurred within the same period of eighteen months. It is a curious paradox of history that where a viable power of dissolution would be useful in helping to solve a most difficult parliamentary state of affairs, as in France today, that power does not exist. On the other hand, where the constitution grants that power, as in Italy, there is no foreseeable need for its use in the course of the next five years.

The Constituent Assembly refused to call the head of the cabinet

[9] Dominedò, A. C., *Debates*, Oct. 22, 1947, p. 1455.
[10] Nobile, A. C., *Debates*, Oct. 24, 1947, p. 1541.

"prime minister," as proposed by the constitutional committee, and reverted to the traditional title of "president of the council of ministers." Having thus refused to classify the chief political officer of the country as anything more than *primus inter pares*, the constitution proceeds, however, to say, in Article 95, that "the President of the Council of Ministers directs the general policy of the Government and is responsible for it. He maintains the unity of political and administrative action, and promotes and coördinates the activity of the Ministers," thus recognizing, far beyond anything provided in the French constitution, the commanding position of the head of the cabinet.

In making clear where cabinet leadership is to be found, and in making cabinet ministers collectively responsible, the constitution seeks to give strength to the cabinet. The same effort can be seen in the provisions surrounding the question of legislative confidence toward the cabinet. The principle of cabinet responsibility toward Parliament is fundamental in a parliamentary government. Any new government must present itself before the chambers within ten days of its formation to seek their confidence. Unlike France, Italy's bicameral system requires that this confidence be granted separately by the Chamber of Deputies and by the Senate. Lack of confidence expressed by one chamber is enough to cause the resignation of the government. But, as in France, the government is subsequently protected against sudden parliamentary attacks. Three full days must elapse before a vote of no-confidence (which must be by roll-call) can be taken, and the motion must be put forward by at least one-tenth of the total membership of either house (the constitutional committee had gone so far as to recommend a minimum of one-fourth of the members). The same Article 94 also makes clear that "a contrary vote of one or both chambers on a government proposal does not carry with it the obligation of resigning." In practice, however, it is likely that if the government is defeated on an important policy matter, a motion of no-confidence will follow, so that, in important issues, this will at most mean the granting of a breathing spell, permitting the government to marshall its parliamentary support.

Serious, but certainly not immediate, difficulties may arise over the grant of confidence to the government by one chamber and the withholding of it by another. With elections to the Chamber and to the Senate occurring, normally, in different years, this is a

likely development, because the chambers will reflect different political moods. The alternative which will then confront the president will be between accepting the negative verdict of one of the two houses and, following the resignation of the government, proceeding to the formation of a new one, or refusing to accept it and dissolving the house which has denied confidence to the government. It may be expected that the determinant factor will be whether the denial of confidence has proceeded from the house which has been elected last. In this case, its verdict should be considered an expression of the present political will of the country, and therefore accepted. A new government would then be formed, and the other chamber dissolved if it refused to grant its confidence.

IV. THE PROTECTION OF FREEDOM AND OF THE CONSTITUTION

A preamble and a bill of rights, which together account for more than one-third of the constitution, protect the individual against the encroachments of the state and promise him those benefits which are today recognized as one of the main functions of government. A regional plan tries to break up and distribute the power of the state. Finally, the constitution itself is recognized as the supreme law of the land, and a special court is set up for its protection. As a result of this threefold approach, it would be difficult to deny that Italy's constitution-makers have made a determined effort to safeguard individual freedom, to prevent excessive exercise of public power from the center, and to place the constitution beyond the reach of any momentary expression of the people's will.

While the French constitution avoids the difficulty of defining civil and political rights and is satisfied with a reference to the Declaration of 1789, the Italian constitution faces the problem, and a listing of the rights of the citizen in the traditionally accepted sense comes before the definition of the new economic and social rights and duties. Article 2 typifies the confluence of the old and the new: "The Republic recognizes and guarantees the inviolable rights of man, whether as an individual or in the social groups through which his personality develops, and requires the fulfillment of the unavoidable duties of political, economic, and social solidarity." The constitution, then, recognizes the right of the citizen to

be left alone and the right to be left free in the activity in which his life, both as an individual and as a member of the community, is fulfilled. But it does more than bar the state from entering these areas of freedom; it directs the state to lend the active support of its machinery to the securing of those rights to work, to security, to welfare, to education, which are today considered an essential part of any organized political society. In exchange for these positive contributions to the citizen's happiness, the state exacts from every citizen, according to the capability and the choice of each, the undertaking of tasks which will contribute to the material and spiritual progress of society.

The bill of rights includes more than a definition of the rights and duties of the citizen and of the state. It contains a general outline of future economic policy. It asserts the principle that public and private economic activity may be directed and coördinated toward social ends. It declares that those economic enterprises which relate to essential public services, and which have an aspect of preëminent general interest, may be turned over to the state or other public agencies or to communities of workers or consumers. It announces the principle of restrictions on the private ownership of land for the purpose of attaining a rational exploitation of the soil and of establishing just social relations. Finally, it recognizes the right of workers, subject to the requirements of production, to collaborate in the management of business enterprises. These are the areas in which the bill of rights has no precise meaning, as it reflects the position of compromise of Christian Democracy, seeking to reconcile the claims of private property and of collective action. A meaning will be given to these clauses only within the framework of specific legislative measures enacted by successive parliaments.

The regional structure finally provided for in the constitution is only a rather pale image of the original intentions of the constitution-makers. It is, however, probably all that it should be, given the problems which lie ahead. In Article 115, the constitution recognizes the regions as "autonomous bodies, with powers and functions of their own according to the principles fixed by the constitution." But the most striking feature of the plan is the extent to which the state has retained the power of control over regional activities. Articles 123–127 are evidence of the fact that the new constitution has not created a federal Italy, but has retained a unitary form of government within which the regions can exercise

useful local functions—always subject to the control of the state, which will see to it that the exercise of these functions lies within the fundamental principles of the laws of the state and is not in conflict with the interests of the nation or of other regions. When such a conflict develops, the regional council, which is the regional legislative body, may be dissolved, as it also may be for reasons of national security. The fear expressed that, following the regional elections to be held later in 1948, the regions might develop into "autonomous republics" and flout the authority of the state, is entirely devoid of any constitutional foundation, just as it is largely outside the realm of political possibilities.

The final text represents a drastic trimming of the impressive grant of powers to the regions which the constitutional project contained. All useful regional and local matters are left within the jurisdiction of the region, and much valuable work can undoubtedly be performed there. But of areas in which it might be said that regional and national jurisdictions overlap, only agriculture is left. Even here, there can hardly be any doubt that national policies with regard to crop controls and prices, wage contracts and land reclamation, agrarian credit policies and land reforms, will prevail over anything the regions may want to do. On the other hand, the very useful and important task of administering national policies at the regional level might be given to the regions, thus achieving one of the main aims of decentralization.

The creation of regions, with its sequel of conflicts among the regions and between the regions and the state, would of itself have required the setting up of a Constitutional Court to settle the differences. The emergence of the Court, however, has a deeper meaning. It reflects the desire to place the constitution, as well as subsequent laws which will be given a constitutional character, beyond the temptation of legislators. The experiment is a bold one for a country brought up in the traditions of Roman, civil, and codified laws and for a country which, like France, has for so long accepted the principle that the legislative power is supreme and that anything approved by Parliament and meeting the outward procedural requirements is law. This is a tradition which has so far made it impossible to distinguish between positive and higher law. The new Italian Constitutional Court is therefore faced with the necessity of breaking with all traditions and precedents in order to carry out its task.

When the French toyed with the same idea, all that they could

agree upon in the end was a constitutional committee with power to tell the (Constituent) Assembly that it was about to "revise" the constitution, and that it had better go about it in the right way. All that this clause accomplished is to make the legislators aware that a revision of the constitution is under way and to call for the special majorities required for the situation. On the other hand, Article 136 of the Italian constitution reads: "When the Court declares unconstitutional a norm of law or of an act having the force of law, the norm ceases to have effect from the day following the publication of the decision." This leaves the Italian Parliament very much in the same position as the American Congress when confronted by a decision of unconstitutionality by the Supreme Court.

To carry out a task which potentially is of a decisive nature, a strong court is required. Whether Article 135 makes provision for such a court can only be a matter for speculation at this point. The Court will be made up of fifteen justices nominated for twelve years, one-third by the president of the Republic, one-third by Parliament in joint session, and one-third by the highest ordinary and administrative courts. Article 137 left to a subsequent constitutional law the establishment of "the conditions, the forms, the terms for bringing action of constitutionality and the guarantees of the independence of the justices of the Court." As its last act, the Constituent Assembly determined to eliminate the uncertainty surrounding this clause. On January 31, 1948, the necessary constitutional law was approved by a vote of 202 to 85, with the Left presumably voting in the negative.[11] Article 1 reads: "The question of constitutional legitimacy of a law or of an act having the force of a law of the Republic, when raised by the bench or by either party to a judicial action, and not held by the judge to be manifestly unfounded, is placed before the Constitutional Court for its decision." This brief provision, which forms the core of the law, seems to be a satisfactory solution of the procedural problems relating to judicial control over the constitutionality of laws. It should be noted that attempts to establish a time limit of two or four years within which the constitutionality of a law could be tested were defeated.

V. THE CONSTITUTION COMES TO LIFE

The constitution was approved on December 22, 1947, by the

[11] A. C., *Debates*, Jan. 31, 1948, pp. 4329 ff.

overwhelming vote of 453 to 62. All major parties supported it; and it went automatically into effect on January 1, 1948. Following the election of a Chamber of Deputies and of a Senate on April 18–19, and of the first president on May 11, the Italian Republic has now begun its constitutional life. The Italian popular legend that there is a star in the sky to look after the country, no matter what her misfortunes or what the follies of which her people are guilty, will certainly receive added strength as a result of the developments of the recent past. For the Italian Republic begins its life under the auspices of a tolerably good constitution which shows more than a minimum of political wisdom, following elections which resulted for the first time in Italy's modern history in the victory of a single political party, and just when the United States has started a far-reaching program for the economic reconstruction of sixteen European countries, including Italy.

The framework and the means, the procedural as well as the substantive requirements, appear to be all at hand to get the Italian experiment in constitutional and progressive democracy in motion under conditions as favorable as this tragic postwar era will allow. Avoiding many of the extremes and weaknesses of its contemporaries, the Italian constitution provides for the exercise of balanced, yet effective, political power. It is careful to protect the rights of citizens, and yet it is mindful of the demands of an industrial age. It makes change possible, and yet grants to the constitution that higher validity without which no constitutional democracy can be said to exist. Having accomplished this, the Italian people have now turned over the primary responsibility for governing the country for the next five years to one political party, the Christian Democrats. The usual fateful consequences of proportional representation were avoided and the main purpose of finding a majority capable of governing was kept successfully in mind. The Marshall Plan will presumably place at the disposal of the Italian government means of unprecedented size which—if wisely used—should guarantee the creation of a more sound and just economic system. Looking at the problem purely within its national boundaries, one must conclude that if the cumulative result of these forces shall not be such as to lead to the gradual establishment of a free and advancing political and economic society, the folly of man must indeed be adjudged immeasurable.

AMERICAN GOVERNMENT AND POLITICS

THE FIRST SESSION OF THE EIGHTIETH CONGRESS

(January 3–December 19, 1947)

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The Eightieth Congress convened under unusual circumstances. The Legislative Reorganization Act of 1946 having just become law, the House and Senate were subjected to the most complete reorganization of recent times. This was due to two things.

First, both parties in each house had to assign *de novo* every one of their members to the newly established committees. Normally, all members reëlected to Congress are returned to their same committee assignments. Thus the committees on committees are not concerned with giving them committee appointments; some transfers from one committee to a more important one are granted upon request to reëlected members, and promotions are allowed by moving up reëlected members to fill any vacancies on their committees created by defeats or resignations from Congress. This time, the number of committee assignments was curtailed under the law along with a sharp reduction in the number of standing committees. In the House, standing committees were reduced from 48 to 19; in the Senate, from 33 to 15. The shake-up called for a reëxamination of all candidates for every committee berth.

Secondly, party control of the two houses had shifted from the Democrats to the Republicans, and in the face of a Democratic Administration. President Truman acknowledged this latter situation in his State of the Union message when he said: " . . . The Congress and the President, during the next two years, must work together. It is not unusual in our history that the majority of the Congress represents a party in opposition to the President's party. I am the twentieth President of the United States who, at some time during his term of office, has found his own party to be in the minority in one or both Houses of the Congress. . . . On some domestic issues," he continued, "we may, and probably shall, disagree. That in itself is not to be feared."

Organization. The Eightieth Congress was convened on January 3, 1947, with a party division in the Senate of 51 Republicans and 45 Democrats, and in the House, of 246 Republicans, 188 Democrats, and 1 American Labor. This was the first time that the Republicans had assumed control in both houses, electing all political and parliamentary officers, since 1929.[1]

[1] The Democrats took control of the House in 1931, when John N. Garner was

The organization around which the two parties set up their machinery in the House and Senate for control of legislative procedure was as follows:

In spite of the shift in political control in both houses and a reëxamination of all committee assignments as well as the selection of all committee chairmen *de novo*, organization was accomplished with great speed.

TABLE I

HOUSE AND SENATE LEADERSHIP

Office	*Republican*		*Democratic*	
	Senate	*House*	*Senate*	*House*
Speaker and president *pro tempore*	Vandenberg (Mich.)	Martin (Mass.)		
Floor leaders	White (Maine)	Halleck (Ind.)	Barkley (Ky.)	Rayburn (Tex.)
Whips	Wherry (Neb.)	Arends (Ill.)	Lucas (Ill.)	McCormack (Mass.)
Chairmen of rules committees	Brooks (Ill.)	Allen (Ill.)		
Chairmen of caucuses	Millikin (Col.)	Woodruff (Mich.)	Barkley (Ky.)	Forand (R. I.)
Steering or policy committee chairmen	Taft (Ohio)	Martin (Mass.)	Barkley (Ky.)	Murdock (Ariz.)
Chairmen of committees on committees	Robertson (Wyo.)	Martin (Mass.)	Barkley (Ky.)	Doughton (N. C.)

The House approved its slate for the offices on the opening day,[2] and confirmed its standing committee assignments of Republicans on January 14[3] and of Democrats on January 16.[4] The Senate, on the other hand, was slowed up for a brief time. On the opening day, since there was no vice-president, and a president *pro tempore* not having been elected by the new majority, the task of presiding devolved upon the secretary of the prior Congress, Mr. Leslie Biffle. The first order of business was giving the oath of office to the senators-elect. The first name, Raymond E. Baldwin, of

elected speaker and Henry T. Rainey majority floor leader, and held it continuously until January 3, 1947, when Joseph Martin, Jr., was elected speaker and Charles A. Halleck majority floor leader.

[2] See *Congressional Record*, 80th Cong., 1st Sess., pp. 32–37; hereafter cited as C. R., 80–1.

[3] C. R., 80–1, pp. 325–326. [4] C. R., 80–1, pp. 393–4.

Connecticut, was called and the oath administered. Then came the name of Theodore G. Bilbo. His right to take the oath was contested. An attempt to get Arthur H. Vandenberg sworn into office and then elected president *pro tempore* was blocked. Finally the Senate recessed, with the secretary still presiding. At a second sitting, on January 4, an agreement was reached by unanimous consent, under the leadership of Senator Barkley, whereby the credentials of Bilbo were permitted to lie on the table, without prejudice, awaiting future settlement. Immediately, the other senators-elect were sworn in.[5] The Senate was then organized with dispatch. On January 6, the Republican assignments to standing committees were confirmed[6] and on January 8, the Democratic assignments.[7] The question of party ratio on committees was raised and discussed at some length, but the assignments were made under unanimous consent procedure.[8]

Procedure: General Aspects. The Congress was technically in session from January 3 through December 19, but was in recess from July 27 until November 17. The Senate sat 143 calendar days and the House 144. A time tabulation shows that the Senate sat a total of 807 hours and 36 minutes, or an average of 5.6 hours per day; the House sat a total of 686 hours and 2 minutes, or an average of 4.8 hours.

Legislative proceedings in the two chambers printed out 11,889 pages of the *Congressional Record*; of this sum, the Senate consumed 6,150 pages and the House 5,739 pages. This compares with 10,921 pages for the preceding session, divided into 5,789 for the House and 5,132 for the Senate. Speeches never delivered in either House and materials incorporated under "leave to print" involved 5,302 pages of appendix, compared with 5,260 pages in the previous session.

The Senate passed 841 bills and resolutions, but only 71 of them were debated for three or more pages of the *Record*. The House passed a total of 1,029, with only 108 debated for three or more pages. These data disclose that only a small proportion of the bills and resolutions passed by each body, even less than ten per cent, could be designated as controversial. Moreover, a number of the measures debated at some length

[5] Senator Bilbo left Washington and entered a hospital for an operation. Death prevented him from returning to the Senate for final disposition of his credentials (See C. R., 80–1, pp. 4–7).

[6] C. R., 80–1, pp. 111–113. [7] C. R., 80–1, p. 167.

[8] Senator Barkley "deplored" the fact that among "the entire list of 15 committees the majority conference decided there should be a disproportionate ratio on the Appropriations Committee, the Committee on Rules and Administration, and the Labor and Public Welfare Committee. It seems to me that other committees might have been selected to take care of all the majority members without what to me and to some of the other Senators on this side appears to be an unfair distribution on these three important committees of the Senate." (C. R., 80–1, p. 113.)

could not be considered controversial. At any rate, the proposals not included in the tabulation (770 in the Senate and 921 in the House) met with little or no opposition. And, generally speaking, they were passed under unanimous consent procedure, by "voice vote" or "without objection."

The Taft-Hartley Labor Bill, to amend the NLRB (H.R. 3020, S. 1126), and the Greek-Turkish Aid Bill (S. 938) were the two measures debated at greatest length by the Senate. In the case of the first named, it was the primary subject of consideration on 17 different days, with the debate involving 522 printed pages of the *Congressional Record*. The debate of the latter printed out 239 pages of the *Record*. The most discussed measure before the House was the European Interim Aid Bill (H.R. 4604), debated on seven days and taking up 217 printed pages.

Senate Procedure. Senate procedure merits particular comment. To begin with, the Senate, under the Reorganization Act, started off the year under a plan to meet only three days a week—Monday, Wednesday, and Friday. Proponents of the proposal felt that this would allow the standing committees more time for public hearings and the preparation of legislation.[9] The idea, however, did not survive long; by the middle of March the calendar of business was so crowded that daily sittings were resumed. For the remainder of the session, except for the long summer recess from July 26 until November 17, the Senate met almost daily and on an average for 5.6 hours per day.

On a few occasions, the Senate experienced what might well be termed a filibuster. At times, the patience of the leadership was tried, and occasionally the temper of the debates ran high. Generally, however, the leadership directed the program according to plan. At practically all times, those in charge for both parties displayed a dignified sense of humor.

In accordance with practice, the presiding officer does not participate in a discussion of legislation from the chair, except as related to parliamentary procedure. But in his dual capacity as chairman of the Foreign Relations Committee and as president *pro tempore*, Senator Vandenberg frequently commented on legislation from the chair, perhaps as much, if not more, than any other presiding officer in the history of the Senate.[10] He was an unusually active senator in determination of the program. The floor leaders and acting leaders, together with the chairman of the majority policy committee (Senator Taft), assumed influential rôles, as would be expected.

To expedite the program, the leadership commonly resorted to the use of unanimous consent agreements to bring debates on controversial issues

[9] For comments on the innovation and reasons therefor, see remarks by Majority Floor Leader White at p. 181 of C. R., 80–1.

[10] For illustrations, see C. R., 80–1, pp. 9302–9303, 3776.

to a close. The time for vote on final passage under this procedure was agreed upon while the debate of the issue was still in progress. Sometimes agreements seemed impossible, and were realized only after much effort, give and take, under the supervision of skilled hands.[11]

There was much complaint by the senators themselves about the lack of attendance.[12] This, of course, is not a new problem; the floor leaders of both parties have chafed under the situation almost continuously in recent years. On one occasion when a complaint of poor attendance was expressed, the majority leader responded: "Yesterday I suggested that the Senator from Wyoming might with propriety, and possible benefit, suggest a modification of our rules which would help in time to solve the problem we confront. We are up against a mass of work which seemingly requires a duplication of presence of Members of the Senate in two different places at the same time."[13] Tied up with this problem, of course, is the holding of committee meetings while the Senate is in session. Permission of the Senate to hold such meetings is necessary, but it is nearly always granted.[14]

Apparently, however, committee meetings while the Senate is in session

[11] Examples of agreements reached can be found in C. R., 80–1, at pp. 6399–6400, 4330–4331, 3691.

[12] C. R., 80–1, pp. 6851, 6910–6911.

[13] C. R., 80–1, p. 5969.

[14] Senator Tydings said: "I do not know of any more important work the Senate does than in committees. In my judgment, it is much more important than the average work done on the floor. Furthermore, so long as we have no limit on debate it frequently occurs that a member of the Senate will feel called upon, as he has the right to do, to speak for 2, 3, or 4, or 5 hours. Personally I have much work to do as an individual Senator, and I should like to be excused so that I could get some of the work done.

"The Committee on Armed Services, of which the distinguished Senator from South Dakota [Mr. Gurney] is the chairman, has been holding meetings now for about two solid months, giving everyone a chance to be heard on the very controversial merger bill. It so happens that the Appropriations Committee, of which I am a member, meets almost simultaneously with the Committee on Armed Services. The Senator from South Dakota is also a member of the Appropriations Committee, as is the Senator from Georgia [Mr. Russell], the Senator from Massachusetts [Mr. Saltonstall], and other Senators who find themselves daily being called to sessions of two committees meeting at the same time.

"If the Congress wishes to get its work done, some way must be found so that the committees can transact business. Personally, I feel that one of the oversights, perhaps, in the Reorganization Act was to compel members not to have committee meetings while the Senate is in session. There are many sessions of the Senate when all Senators ought to be present. There are many sessions of the Senate when I do not feel that a Senator can render any real service if a member is speaking for 3 or 4 hours on the floor of the Senate, when we could be devoting ourselves to considering and preparing for submission to the Senate constructive and needed legislation." (C. R., 80–1, pp. 5583–4).

is not the sole reason why attendance is poor.[15] Senator Tydings, on May 19, told the Senate that he was not "going to sit here and listen" to four- or five-hour speeches "unless the Sergeant-at-Arms makes me." He added: "You get very little information out of a speech that takes four or five hours to deliver. The average man could say it all in thirty minutes."[16] It should be emphasized also that quorum calls occasioned by poor attendance steal much of the Senate's time. During the session there were 332 such calls, and sometimes a single call requires as much as half an hour.

In the matter of committee jurisdiction, the Senate took an unusual but reasonable action in the case of legislation to terminate emergency and war powers. Under the rules, this legislation is handled by various standing committees. To simplify the matter, however, the Senate adopted S. Res. 35, providing that each committee having jurisdiction over such pending bills should study the particular phase with which it was concerned and report its recommendations to the Judiciary Committee, which in return should study the whole issue, including the various reports, and then recommend to the Senate what should be done. Hence the committee reported one bill (S. J. Res. 123) which had the effect of "repealing 60 statutory provisions," effecting the repeal within one year of 16 additional statutory provisions, and terminating operations under 108 further statutory provisions so far as those operations depended upon "the existence of war heretofore declared by the Congress or the emergencies proclaimed by the President on September 8, 1939, and May 27, 1941."[17]

At the close of the first portion of the first session, the Senate almost ran into an *impasse* over the so-called Kem Resolution (S. Res. 150) for

[15] Senator Barkley, minority floor leader, stated: "Yes, Mr. President, I deplore as much as any other Senator the absence of Senators from the floor. I have labored with that problem for years. . . . I do not know what is responsible. I cannot project my vision into the bosom of any Senator and find out why he does not attend. He may have work in his office. He may have other things to look after. I doubt now, if a census were to be taken of all the committees that are in session this afternoon, if there are any which have obtained consent to sit during the sitting of the Senate, there would be found a sufficient number of members there to make up the deficiency between the number of Senators present and the number necessary to make a quorum. I doubt very much if the meeting of these committees in the afternoon has had much to do with absenteeism. I recall that a certain committee before which I was to appear a few days ago obtained consent to meet during a session of the Senate, and I appeared before the committee to testify. The chairman of the committee was the only one who was there. I made my statement and left. Certainly the consent of the Senate that that committee hold a meeting in the afternoon did not result in the absence of a quorum on the floor of the Senate. I do not know what the remedy is. (C. R., 80–1, p. 6853.)

[16] *N. Y. Times*, May 20.

[17] C. R., 801, p. 7740.

an investigation of the Department of Justice for not investigating and prosecuting in the case of alleged frauds committed in the primary election in Kansas City. Here the President had expressed an interest in the choice of candidates. The matter was first brought to the Senate on July 16, when S. Res. 150, to discharge the Judiciary Committee from further consideration of S. Res. 116, to make the investigation, was debated and placed on the Calendar. The motion to consider the resolution followed. The maker of the motion would not withdraw it, and the minority was determined not to let it come to a vote. From then until adjournment on July 27, all business was transacted under unanimous consent procedure, by making such a request to put aside temporarily the resolution until some other business could be transacted.[18]

On the last night, under this unanimous consent procedure, the Senate quickly passed the Armed Forces Promotion Bill (H.R. 3830). Senator Connally was very critical of the action. He stated: " . . . this is a very simple little bill. It is only 300 pages long, a bill which the Senate is asked to swallow in five minutes. . . . Why, the chairman of the committee," he said, "has not even read the bill in its entirety."[19] The senator in charge, however, pointed out that the committees of the House and Senate had spent much time on the measure.

President Truman paid an informal visit to the Senate on July 23, and was recognized for five minutes to address the Senate. Senator Vandenberg, in recognizing the President, said: "There are few situations in the life of the Senate for which there is not some available precedent. The present happens to be one, however, for which no precedent is known. The chair is very happy to welcome the former Senator from Missouri to his old seat in the Senate. . . . The ex-Senator from Missouri is recognized for five minutes."[20]

House Procedure. The House passed 1,029 bills and resolutions; others were discussed, but were defeated or never came to a direct vote. Approximately 900 of the measures passed were brought up under unanimous consent procedure, on call of the Unanimous Consent Calendar, or on call of the Private Calendar. Under either of these procedures, the bills or resolutions are normally passed "without objection" or by unanimous consent. The others were brought up under special rules, suspension of the rules, call of District of Columbia business, or as privileged business because of the nature thereof.

Without regard to the number of bills passed, the time spent by the House was primarily devoted to the disposition of bills and resolutions brought up under special rules or because of their privileged status—as

[18] Conference reports (privileged business) could be brought up under regular procedure, merely staying the pending business until finished.

[19] C. R., 80–1, 10609–10614. [20] C. R., 80–1, p. 10020.

general appropriation bills and tax bills.[21] In effect, approximately 125 measures were thus approved. Fifty-two bills and resolutions were cleared for consideration by the use of special rules. The Rules Committee actually reported 70 resolutions providing for special consideration of 70 pieces of legislation, but the House adopted only 58 of them;[22] six of these were adopted solely to waive points of order against general appropriation bills, which because of their nature were privileged for immediate consideration. The six resolutions were thus justified to prohibit the elimination of provisions in the six appropriation bills on points of order. A single member, by raising a valid point of order under the rules of the House, may eliminate any or all legislative provisions in an appropriation bill or any provisions not germane to any bill. Actually, 33 of the 58 resolutions waived points of order against 33 bills, including the six appropriation measures. Five of the 52 did not allow the bills to be read under the five-minute rule for amendments; instead, they provided that the bills be considered as having been read for amendment. Four of these allowed committee amendments only, and one prohibited any amendment. The other 47 were read for amendments under the five-minute rule. The previous question to final passage was considered as ordered in the case of all 52 bills and resolutions brought up for consideration under a special rule, immediately after the general debate and amending process, "except for one motion to recommit."

The 58 special rules adopted compares with 57 for the preceding session;[23] but 33 of these waived points of order against the pieces of proposed legislation as compared with 13 in the prior session. Of the 58 bills and resolutions considered under these 58 special rules, 37 became public law, 15 passed the House but were still pending in the Senate without final action at adjournment of the first session, five were vetoed, and one died in conference.

No bills were passed under Calendar Wednesday procedure, but 13 were passed under suspension of the rules. Under the latter device, the Speaker is free to recognize whomsoever he wishes to bring up whatever bill he desires. One bill (H. J. Res. 273) for the stabilization of commodity prices was called up under suspension of the rules and defeated by a vote of 202 to 188; a companion bill was brought up and passed four days later under a special rule, after it had passed the Senate, becoming law on December 30.[24]

[21] Considerable time was spent on conference reports and veto messages, both of which are privileged business.

[22] Fifty-eight were adopted, seven were laid on the table when bills for which they provided consideration were passed under unanimous consent, and five were left on the calendar at the end of the session.

[23] Fifty-nine were acted on, but only 57 were adopted—one was defeated and the other recommitted.

[24] The original copy of this bill sent down for the President's signature was lost

Ten motions to discharge committees from further consideration of bills were filed, but not one received a sufficient number (218) of signatures for entry on the Discharge Calendar. A considerable amount of the House's time was devoted to yeas and nays and roll calls—there were 84 yea and nay votes and 69 quorum calls. It took an average of at least half an hour for each of these, or roughly 76 hours in all.

In one day's sitting, November 24, the House adopted 10 resolutions citing 10 employees of the movie industry for contempt for refusal to answer questions before the Committee on Un-American Activities. The first two were adopted by yea and nay votes of 346 to 17 and 240 to 15. The other eight were adopted by voice vote.

Legislative Activity. Five hundred and twenty-six laws were enacted, of which 395 were public and 131 private;[25] these figures being a decrease from those for the preceding session.[26] The House passed 1,029 bills and resolutions, and the Senate 841.[27] Sixty-six measures were sent to conference, after having passed the two houses in substantially different forms; and all but four of these were cleared for the President. Conferees actually filed 59 written reports.

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in the White House, which caused a bit of excitement. With the deadline approaching before the President had to sign or pocket veto it, a duplicate copy had to be rushed to the speaker and president *pro tempore* for signature.

[25] Under Section 131 of the Reorganization Act, private claims arising after January 1, 1945, may not "be received and considered in either the Senate or the House." The one-year statute of limitation is stipulated in the Federal Tort Claims Act as not applicable to such claims arising prior to January 1, 1945. Likewise, claims arising prior to January 1, 1945, are not banned under Section 131 of the act. Hence, bills involving claims prior to January 1, 1945, may be introduced at any time. Also, there are other possible exceptions under the Federal Tort Claims Act.

[26] During the second session of the Seventy-ninth Congress, 967 laws were enacted—440 public and 527 private.

[27] The legislative activity of the two chambers was greater than the number of laws enacted. Of the 1,029 measures passed by the House, 568 were House bills, 138 Senate bills, 33 House joint resolutions, 29 Senate joint resolutions, 21 House concurrent resolutions, 10 Senate concurrent resolutions, and 230 House resolutions. (In the second session of the Seventy-ninth Congress, 1,183 measures were passed). During the first session of the Eightieth Congress, 5,658 bills and resolutions were introduced in the House, of which 4,831 were House bills, 284 House joint resolutions, 129 House concurrent resolutions, and 414 House resolutions. (In the second session of the Seventy-ninth Congress, 2,566 bills and resolutions were introduced in the House). House committees made 1,234 reports.

Of the 841 measures passed by the Senate in the first session of the Eightieth Congress, 278 were Senate bills, 368 House bills, 47 Senate joint resolutions, 30 House joint resolutions, 12 Senate concurrent resolutions, 19 House concurrent resolutions, and 87 Senate resolutions. (In the second session of the Seventy-ninth Congress, 1,098 measures were passed.) During the first session of the Eightieth Congress, 2,312 bills and resolutions were introduced, of which 1,924 were Senate bills, 170 Senate joint resolutions, 37 Senate concurrent resolutions, and 181 Senate resolutions. (In the second session of the Seventy-ninth Congress, 977 bills and resolutions were introduced in the Senate). Senate committees made 809 reports.

Appropriations. Twenty-three regular, supplemental, deficiency, emergency, and specific appropriation bills, involving a total of $30,130,712,139 of direct appropriations were enacted; this compares with $34,794,462,114 appropriated during the previous session. The budget estimates on which these appropriations were based totaled $33,455,812,942. The bills involved contract authorizations totaling $1,394,932,355, based on budget estimates of $1,093,502,755. Reappropriations amounted to $58,236,477. Congress rescinded $4,069,167,407 in direct appropriations already provided and $132,000,000 of contract authorizations.[28]

The legislative budget procedure under the Reorganization Act was not successful. The Joint Committee on the Legislative Budget examined the President's estimates and filed its report on February 15, recommending a reduction of six billion dollars in the budget estimates. Subsequently, concurrent resolutions were introduced in each House to limit the amount of federal expenditures for the fiscal year 1948. The House passed its concurrent resolution (H. Con. Res. 20) on February 20, proposing to cut the President's budget by six billions. The Senate passed the resolution on March 3, proposing to reduce the estimates by four and one-half billions. The resolution was sent to conference on March 4, where it was permitted to remain through adjournment.[29]

For the first time in years, the Senate Appropriations Committee held public hearings on all of the appropriation bills, as proposed in the Reorganization Act. The House committee voted to continue its hearings in executive session.[30]

Members of both appropriations committees were critical of the Administration for failure to coöperate in the attempt to reduce expenditures. To illustrate, Senator Knowland stated: "The committee did not get the type of coöperation from the executive branch of the government that I feel a committee representing the Senate is entitled to have from the executive branch."[31] Representative Robertson declared: "We are confronted with one of the most difficult problems which a legislative body has to meet—the task of reducing appropriations in the face of demands

[28] These figures were compiled by the Bureau of the Budget.

[29] In discussing the resolution, Senator O'Mahoney stated: "I believe that public spending should be reduced to the utmost, but I recognize the fact, which the whole country ought to know, that this resolution is nothing more than a gesture; it means nothing; it is not a commitment." Senator Taft replied: " . . . When we adopt this resolution . . . I shall regard it as a promise, so far as I personally am concerned, to see that the appropriations passed by the Senate do not exceed that amount." (C. R., 80–1, pp. 1646–1647.)

[30] The Reorganization Act provides: "All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session." Sec. 133 (f).

[31] C. R., 80–1, p. 4643.

for greater appropriations from nearly every agency. We have received little or no help from the heads of agencies in this all-important task of reducing appropriations."[32]

In one of its reports, the House Appropriations Committee pointed out that: "One of the most amazing pieces of testimony in the record is that of the General Accounting Office indicating that almost nowhere in the Government is there any semblance of cost accounting; that billions of dollars have been spent which can never be properly accounted for. It appears that the General Accounting Office has encountered difficulty in inducing certain Government agencies to adopt accounting systems which it deems to be essential. The Maritime Commission, to take one example, has apparently declined to coöperate in this respect for almost 10 years. The Comptroller-General, it will be recalled, found that this agency had spent over $8,000,000,000 up to July 1, 1943, which could not be properly accounted for."[33]

Most of the reports were critical of government spending, particularly those by the House committee. Not only was a reduction urged in the over-all spending by the government, but the reports by the committees insisted that particular agencies curtail their outlays and that expenditures for specified purposes be reduced or eliminated. The House, in the Labor-Federal Security Appropriation Bill, struck at Edgar L. Warren. Its committee reported that "after thoroughly discussing the background, attitudes, and actions of the present Director of the Conciliation Service, the committee is of the opinion that it cannot appropriate public funds for a position to be filled by such an individual."[34] Mr. Warren finally resigned his post.

Funds were carried for payment of judgments rendered by the Court of Claims in favor of Goodwin B. Watson, William E. Dodd, Jr., and Robert Morse Lovett. Congress had formerly written provisions in appropriation bills to prohibit salaries to these persons on grounds of being unfit for government service. They then worked for short periods and sued for recovery of salaries.

Investigating Committees. There was an attempt to include in the Legislative Reorganization Act of 1946 a provision to ban special investigating committees; the Senate approved it, but the House did not. With the beginning of the Eightieth Congress, there was a fight on the part of a strong minority to prohibit the creation of any further investigating committees. It was proposed that any and all future investigations be made by the standing committees or subcommittees thereof. Nevertheless, various special and investigating committees were continued or created *de novo*. In

[32] C. R., 80–1, p. 7325.

[33] H. Rept. 589, p. 3. This report accompanied H. R. 3839, Independent Offices Appropriation Bill, 1948.

[34] H. Rept. 178, p. 9.

addition to joint committees, the House and Senate adopted resolutions to authorize 24 and 14 general classifications of investigations, to be undertaken primarily by their standing committees, respectively, as set forth in a footnote below. These resolutions authorized studies by special committees or standing committees, or subcommittees thereof, in the fields of agriculture; business, industry, and trade; government; foreign affairs and immigration; national defense; taxation and finance; and various other specific matters.[35] Each standing committee in the Senate is authorized to make inquiries into "matters within its jurisdiction" under the Legislative Reorganization Act, though it must have the Senate's approval for additional funds. House standing committees do not have such blanket authority.

The Senate as a Council. Nominations received by the Senate during the session totaled 40,557, of which 39,855 were confirmed, none rejected, 132 withdrawn, and 570 left unconfirmed at the close of the session.[36] This is

[35] The Senate adopted the following: S. Res. 20, small business; S. Res. 46, national defense; S. Res. 54, 114, and 142, election of senators; S. Res. 75, surplus property; S. Res. 120, judicial matters; S. Res. 129–130, appropriations; S. Res. 132, RFC; S. Res. 141, social security; S. Res. 137, immigration and displaced persons; S. Res. 148, Indians, reclamation, and related problems; S. Res. 147, agriculture; S. Res. 152, governmental relationships; S. Res. 156, interstate and foreign commerce matters; and S. Res. 161, "voice of America" program.

The House adopted the following: H. Res. 18, small business; H. Res. 36, merchant marine and fisheries; H. Res. 58, newsprint; H. Res. 61 and 151, appropriations; H. Res. 90 (see also 100, 170, 185, 196, 197, 207, 333, 334), government agencies, including surplus property, propaganda activities, rules and regulations; H. Res. 77 (also H. Res. 152), providing funds for investigations by Un-American Activities Committee; H. Res. 93, matters of Public Lands Committee; H. Res. 111, matters of Education and Labor Committee; H. Res. 118, actions, regulations, etc., of government agencies; H. Res. 120, Veterans Affairs Committee investigations; H. Res. 141, Armed Services Committee investigations; H. Res. 153, Interstate and Foreign Commerce Committee investigations; H. Res. 166, potato surplus; H. Res. 176, Post Office and Civil Service Committee investigations; H. Res. 195, D. C. home rule; H. Res. 211, surveys of certain works of improvement; H. Res. 293, internal revenue laws; H. Res. 295, Foreign Affairs Committee investigations; H. Res. 296, foreign aid; H. Res. 298, Agriculture Committee investigations; H. Res. 338, investigation of contested elections cases; H. Res. 373, funds and authority to Committee on Public Works; H. Res. 403, to study gray markets; and H. Res. 404, commodity exchange investigations.

The following were joint investigations: S. Con. Res. 19, consumer prices by Joint Committee on Economic Report; H. Con. Res. 104, housing; Public Law 101, Special Joint Labor Study Committee; Public Law 162, Commission to Study Executive Branch of Government; Public Law 585 of 79th, Atomic Energy; Public Law 601 and 304 of 79th, Joint Committee on the Economic Report; Public Law 250 of 77th, Joint Committee on Non-essential Expenditures; Section 1203 of Revenue Act of 1926, Joint Committee on Internal Revenue Taxation; Public Law 287, Temporary Congressional Aviation Policy Board.

[36] The Armed Forces nominations were held over for the ensuing session, instead

the largest number of nominations ever submitted during a single session; 25,966 were submitted in the previous session, the second highest number.

The most debated nomination of the session was that of David E. Lilienthal to be chairman of the Atomic Energy Commission. The Senate debate involved 166 printed pages of the *Record*, and the nomination was the subject of discussion on eight different days. Finally on April 9 it was confirmed by a vote of 50 to 31, after a motion by Senator Bricker to recommit it for further investigation was rejected by a vote of 38 to 52.

The nomination of Gordon R. Clapp to be a member of the Board of Directors of the TVA was confirmed on April 24 by a vote of 36 to 31. The Committee on Public Works had adversely reported the nomination on February 28 by a vote of 7 to 5.

Senator O'Daniel contested the nomination of Joseph B. Dooley to be United States district judge on the ground that "this man is personally obnoxious to me." On July 1, 1947, however, the nomination was confirmed. Senator Tydings sponsored the nomination of Philip B. Perlman to be Solicitor-General of the United States. Judiciary Committee action on the nomination was delayed, but finally reported on July 21, 1947, after Senator Tydings on a prior occasion had proposed discharge of the committee from further consideration of it. The nomination was not brought up in the Senate until the dying moments of the first part of the session, July 27, following adoption of S. Con. Res. 33 to adjourn the session until January 2, after the House had already adjourned.

Action on all postmaster nominations was delayed until July. The Democrats insisted, meanwhile, that something should be done about reporting and confirming nominations of several hundred postmasters; the Republicans maintained that more study should be made before final action. Before the session was adjourned, however, most of the nominations were confirmed.

Treaties consumed very little of the Senate's time. The Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro on September 12, 1947, was ratified on December 8 by a vote of 72 to 1. Other treaties approved during the session included one with China on Friendship, Commerce, and Navigation; the Italian, Rumanian, Bulgarian, and Hungarian peace treaties; the protocol prolonging the international agreement regarding the regulation of production and marketing of sugar; and the inter-American coffee agreement.

On April 17, Senator Vandenberg reported on behalf of the Committee on Foreign Relations a resolution which was passed without objection, directing the secretary of the Senate to return 19 obsolete treaties which

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of having to be resubmitted. This procedure was possible under unanimous consent to suspend Rule 38, paragraph 6, as applied to these nominations.

in his message to the Senate on April 8, 1947, the President had asked to have withdrawn.

Congress and the Administration. The relationship between the President and Congress took its tone from their differences in political faiths. As in all recent Congresses, nevertheless, the Administration formulated its program, sent it to the House and Senate, and urged its enactment. The program was submitted to the legislature primarily in three documents: the State of the Union message,[37] the budget message for the fiscal year 1948,[38] and the special message of November 17, 1947,[39] on "interim aid for certain Western European countries and a program to curb inflation in the United States."

Some of the program was enacted substantially in the form recommended, some of it was ignored, while other parts of it were the subject of legislative enactment, but not necessarily to the taste of the Administration. A few major bills, having passed both houses, were vetoed, and the vetoes were sustained. By and large, the President was not too successful in getting what he asked for except in the case of his foreign policy.

The President's interim aid program "for certain Western European countries" became law on December 17 (P.L. 389) practically in the form requested. His recommendation for terminating certain emergency and war powers[40] was approved on July 25.[41] The presidential succession proposal, making the speaker of the House the third in line, became law on July 18.[42] The President was granted $400,000,000 for aid to Greece and Turkey.[43] After many meetings and prolonged hearings, the bill to create a National Military Establishment by consolidating the various branches of the Armed Services became law.[44] Other proposals of major importance written into law in close keeping with the Administration's recommendations included: re-incorporation of the Export-Import Bank;[45] extension of rent control;[46] extension of the Commodity Credit Corporation to June 30, 1948;[47] R.F.C. extension until June 30, 1948;[48] extension of the

[37] C. R., 80–1, pp. 135–9.
[38] H. Doc. 19 of 80th Cong.
[39] H. Doc. 430 of 80th Cong.
[40] See H. Doc. 141 of 80th Cong.
[41] See S. J. Res. 123, which became P. L. 239.
[42] Original message submitted on June 29, 1945; a supporting letter was sent on Feb. 5, 1947; S. 564 became P. L. 199.
[43] S. 938; P. L. 75.
[44] S. 758 became P. L. 253.
[45] S. 993; P. L. 89.
[46] H. R. 3203; P. L. 129.
[47] S. 350; P. L. 130.
[48] S. J. Res. 135; P. L. 132.

Second War Powers and Export Control Acts;[49] the Sugar Act of 1948;[50] and the Armed Services Personnel Act.[51]

A number of the President's recommendations were never enacted; some never passed the discussion stage. The "establishment of a well-integrated Department of Welfare" reached only the stage of introduction. Suggestions to "protect the civil rights of citizens" were barely mentioned. A bill to establish and carry out a national housing policy was reported in the Senate,[52] but never passed that stage. Nothing was done to "set the stage for permanent farm welfare." Selective service was permitted to expire as of March 31 without extension and before any action was taken on Universal Military Training.[53] At the time of adjournment on December 19, Congress had acted on only one of the proposals of the President in his message of November 17. No bill was enacted by the end of the first session to carry out the ten recommendations in that message on his anti-inflation program. Congress did enact a bill (S. J. Res. 167) "to aid in the stabilization of commodity prices and to stabilize the United States economy" by voluntary methods (P.L. 395). Finally, no legislation was forthcoming on educational aid (except for veterans), FEPC, extension of social security benefits, statehood for Hawaii, self-government for the District of Columbia, the St. Lawrence waterway, and minimum wage increase.

Congress, in spite of the President, enacted bills on labor-management relations,[54] freezing pay-roll taxes at one per cent until 1950, and portal-to-portal pay.[55] Two of these issues provoked much controversy. The Taft-Hartley Labor Bill passed both houses after heated contests, and by large enough majorities to override a veto; the same was true in the case of the conference report, which was basically the Senate bill.[56] The bill was duly vetoed, but there was little question that it would become law from the date the Senate first passed its version on May 13, 1947. There was question as to how it would be administered. The President had characterized the proposed law as "unworkable" and had added that it would "do serious harm to our country." This situation caused various members of Congress publicly to question the wisdom of the part the President had played before a final verdict by the House and Senate.

In the case of the Portal-to-Portal Pay Bill, the President finally signed

[49] H. R. 3647; P. L. 188.
[50] H. R. 4075; P. L. 388.
[51] H. R. 3830; P. L. 381.
[52] S. 866; S. Report 140.
[53] Bills were introduced and hearings and executive sessions were held, but committees never voted to report such a measure.
[54] H. R. 3020; P. L. 101.
[55] H. R. 3818; P. L. 379.
[56] H. R. 2157; P. L. 49.

the measure, but unwillingly; and he sent a message to Congress explaining his reasons for signing—an unusual procedure. In this message, he placed certain interpretations upon what the law meant. In reply, the Judiciary Committee issued a statement on the "full intent and purpose of the legislation." The Chief Executive's procedure was criticized. A Democratic senator stated: "Mr. President, I want it understood that I do not believe that any statement by the President, when he either signs or vetoes an act of Congress, becomes any part of its legislative history."[57]

The President vetoed several important bills which were not passed over his veto. Among them were the two bills "to reduce individual income tax payments." Congress was unable to override the veto in either instance; the House mustered a two-thirds vote in the second case, but the Senate failed by a vote of 57 yeas to 36 nays.[58] Congress sustained the President's veto of S. 814 to provide price support for wool, but it took his reasons into consideration and then enacted another bill (S. 1498) which the President signed. The pocket veto of S. 526, Science Foundation Act, of August 6, 1947, was final; nothing further was done about it during the second portion of the session.

There was considerable comment in the two houses concerning pressure incited by the Administration and brought to bear on Congress to get certain funds or legislation. To illustrate: in the case of the "customs budget," the activity by the National Customs Service Association to get the full amount of the budget estimates appropriated was emphasized. This caused a considerable stir and incited much condemnation of administrative activity in the interest of self-perpetuation.[59] A comparable picture was exhibited in the case of funds for the soil conservation program carried in the Agriculture Appropriation Bill.[60] As a result of an investigation by the House Committee on Expenditures in the Executive Departments into publicity and propaganda as relating to universal military training, a special report was made to the House which concluded: "On the basis of the evidence at hand, the War Department, its personnel, and civilian employees have gone beyond the limits of their proper duty of providing factual information to the people and the Congress and have engaged in propaganda supported by taxpayers' money to influence legislation now pending before the Congress."[61]

Speeches in both chambers and reports of the House and Senate com-

[57] C. R., 80–1, p. 6416: comment by Senator McGrath.

[58] The two bills were H. R. 1 and H. R. 3950.

[59] See C. R., 80–1, p. 3066; also see legislative history of H. R. 2849, Deficiency Appropriations Bill.

[60] See legislative history of this bill (H. R. 3601) and the attention called to letters sent out by county agents, etc.

[61] House Rept. 1073, p. 7.

mittees devoted to the annual supply bills gave continual warnings to administrative agencies to curtail their expenditures, stop wasting funds, increase their efficiency, cut off any unnecessary outlays, keep within the confines of the law and their respective jurisdictions, and move at all times toward carrying out the "intent of Congress."

During the session, President Truman vetoed 32 bills, of which one became law over his veto.[62] The House failed in its attempt to override the veto of the first tax bill (H.R. 1); in the case of the second (H.R. 3950), the House was successful, but the Senate failed. Nineteen of the vetoes were of the pocket variety.

[62] H. R. 3020, labor bill; P. L. 101.

STATE CONSTITUTIONAL LAW IN 1947–48*

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The total number of cases arising under state constitutions this year is substantially larger than last year. The bulk of the increase seems to fall in the area of civil rights, particularly procedural rights, although there is some increased activity in areas of state and local government as well. The cases fall readily into the general pattern followed in last year's survey.

I. GOVERNMENTAL ORGANIZATION

1. State Government. The standing and circumstances necessary to enable a party to secure a decision on the constitutionality of a statute were discussed by the highest courts of four states. In 1947, the Tennessee legislature passed an Anti-Closed Shop Act which was promptly attacked by a union recognized by the NLRB as exclusive bargaining agent in the defendant plant. A county chancery court upheld the statute against arguments that it violated the state and federal constitution. Before the day fixed for hearing on appeal, the union requested that the appeal be dismissed, a request resisted by the employer and the attorney-general.[1] It is clear from the argument on the request that both parties were seeking an adjudication on the federal question from the federal Supreme Court. Evidently, however, the union decided to press the matter to the latter court in a different and more favorable controversy. In this case, since the lower court upheld the constitutionality of the law, the public interest, it was said, would not be impaired by dismissal. From the precedents cited, however, it seems likely that if the lower court decision had been against the law's constitutionality, the Supreme Court would have refused the request. The same court also held that where the defendant has attacked the constitutionality of a statute unsuccessfully in a criminal trial, he many not raise the same questions in a civil case brought against him, even when the prior adjudication was made in an unpublished opinion.[2]

The supreme court of Illinois refused to take jurisdiction on a direct appeal from a judgment of a superior court because the matter appealed

* I am indebted to Miss Eva Zimbler, research assistant in political science, for aid in the preparation of this manuscript.

[1] Federal Firefighters v. Roane-Anderson Co. *et al.*, 206 S.W. (2nd) 369 (Tenn., Dec., 1947).

[2] Haynes v. Sanford *et al.*, 206 S.W. (2nd) 796 (Tenn., Nov., 1947). The court, however discussed the question raised and concurred with the lower criminal court. To the same effect, State v. Manard, 185 P. (2nd) 483 (Okla. Cr. App., Oct., 1947).

was not the type of constitutional question required to give it jurisdiction.[3] The lower court had refused to set aside the sale of certain certificates and judgments based on the constitutional liability of bank stockholders. Petitioner claimed that this action deprived him as a bank creditor of the opportunity to bid for their purchase and deprived him of property without due process of law. Since this came down to a question of whether more could be recovered by sale of the judgments than by their execution, all the supreme court could review was the question of abuse of discretion, which was not a direct attack on the statute. In another decision on the same subject, this court held that a claim that the statute under attack was unconstitutional only to the extent that it was to be applied to him, but otherwise was valid, did not raise a constitutional question of a nature to justify a direct appeal.[4] This was held even though the trial judge certified to the contrary.

A West Virginia case concerns the power of the state to sue. The statute provided a system for the disposal of tax delinquent lands. Such lands were to be sold for taxes due and, if no higher bid was entered, were to be bought by the state. Subsequently they could be sold by means of a suit in equity against the former owner for what they would bring. The constitution provides that the latter sale can take place only when the state's title has become absolute, while the statute provided that the title becomes absolute only by instituting sale proceedings. The court dismissed the actions as premature.[5] Similarly, an attack on a pension fund on the ground that, as the law was construed, the fund would not be adequate to pay the claims against it was premature as respects the litigant suing when there still was money in the fund.[6]

The Missouri court held that a constitutional provision giving the supreme court appellate jurisdiction to hear cases involving construction of the revenue laws or cases to which a political subdivision of the state is a party, did not give jurisdiction to hear an action to recover delinquent taxes levied by a sewer district.[7]

Unique standing in a controversy which sets the petitioner apart from other citizens, electors, taxpayers, or residents is required to create a legal case or controversy upon which the judiciary can operate in Montana. A resident, citizen, and taxpayer lacks such a special interest to

[3] Lurie v. West Town State Bank, 75 N.E. (2nd) 895 (Ill., Nov., 1947). See also Kauffroath v. Wilbur, 185 P. (2nd) 522 (Ariz., Oct., 1947); Butane Corp. v. Kirby, 187 P. (2nd) 325 (Ariz., Dec., 1947).

[4] Village of Riverside v. Kuhne, 73 N.E. (2nd) 286 (Ill., May, 1947).

[5] State v. Farmer's Coal Co., 43 S.E. (2nd) 625 (W.Va., Jan., 1947). See also Shumway v. Fleishman, 187 P. (2nd) 636 (Ariz., Dec., 1947).

[6] Taylor v. Marsh, 43 S.E. (2nd) 606 (S.C., July, 1947).

[7] St. Ferdinand Sewer Dist. v. Turner, 203 S.W. (2nd) 731 (Mo., July, 1947). See also Sound Inv. Co. v. Griffin, 205 S.W. (2nd) 257 (Mo. App., Oct., 1947).

permit him to attack a statute providing for licensing of slot machines as in conflict with the constitutional ban on lotteries.[8]

Most constitutions contain limitations on the jurisdiction of certain types of courts in terms of the amount of money involved or the seriousness of the crime charged. When the plaintiff sues for damages in an amount sufficient to fulfill such a requirement, or the aggregate of several plaintiffs' claims is sufficient,[9] and the defendant files a cross action for less than the minimum, there is considerable doubt about the power of the court to render an affirmative judgment for the defendant.[10]

When the constitution provides an exclusive original jurisdiction in a specified court, the legislature is not prevented from providing for an appeal and trial *de novo* of the same case in another court, although the constitution will require that the appeal must be from the decision and not from interlocutory rulings.[11] Similarly, when a case is appealed to the supreme court under a constitutional provision authorizing transfer when the judges of the lower court are evenly divided, the supreme court will rule only on the question certified.[12]

The question of whether a constitutional provision directing that the courts shall be open except on legal holidays invalidates by implication a judgment made on such a day has produced considerable confusion in the decisions of state courts. Montana this year joins those states which hold that a failure to object at the time constitutes a waiver and precludes such an objection on appeal.[13] Procedural details were also clarified in Florida, where the supreme court held that the legislature could authorize declaratory decrees by an equity court affecting a contract for the sale of chattels without violating the constitutional provision preserving the distinction between law and equity.[14]

[8] Chovanak v. Matthews, 188 P. (2nd) 582 (Mont., Jan., 1948). The action was brought under the Uniform Declaratory Judgment Act. See also Cobb v. S. C. Nat'l Bank, 43 S.E. (2nd) 465 (S.C., July, 1947), holding that the guardian of an insane person has a right to an appeal even though such a right is unmentioned in applicable legal provisions, and even though such a right is not inherent. And see Metcalf v. Howard, 201 S.W. (2nd) 197 (Ky., Mar., 1947), holding that county officers may attack the constitutionality of a statute as to the way in which it applies to counties other than their own. Compare Sypolt v. Shaffer, 43 S.E. (2nd) 235 (W.Va., Jun., 1947); Cothran v. Rock Hill, 43 S.E. (2nd) 615 (S.C., July, 1947).

[9] City of St. Louis v. Essex Inv. Co., 204 S.W. (2nd) 726 (Mo., Oct., 1947).

[10] Watkins v. Cossaboom, 204 S.W. (2nd) 56 (Tex. Civ. App., June, 1947), held that the court had jurisdiction.

[11] Hartley v. Heboell, 44 S.E. (2nd) 896 (Ga., Oct., 1947). The same reluctance to interfere with interlocutory rulings, in this case by writ of prohibition, is found in Sheffer v. Speckman, 205 S.W. (2nd) 305 (Ky., Oct., 1947). See *contra* Sicker v. Powers, 74 N.E. (2nd) 638 (Ohio, App., Dec., 1947).

[12] Rawleigh Co. v. Forbes, 43 S.E. (2nd) 642 (Ga., July, 1947).

[13] Miller v. Emerson, 186 P. (2nd) 220 (Mont., Oct., 1947).

[14] Fraser v. Cohen, 31 So. (2nd) 463 (Fla., July, 1947).

A much more significant question was raised in Tennessee. There the constitution provides certain qualifications for inferior court judges. In 1937, the legislature added to the qualifications by requiring that the judge be an attorney. The supreme court held that the clear implication of the constitution was that the qualifications enumerated were exhaustive, and that another constitutional section providing for the appointment as special judges of "men of law knowledge" indicated that the authors of the document did not believe that legal experience should be a monopoly of the profession.[15] The same court also held that a county court is a constitutional court within the meaning of the section providing for removal of the judge by the legislature, even though he was paid from county funds and duties annexed to his office by statute are in many cases not of a judicial character.[16]

An equally significant problem was raised in Missouri. There the constitution provided for a fixed number of magistrate courts in counties of four population classes and conferred on the circuit court in the county the power to increase the fixed number by two "on petition" and hearing, and "according to the needs of justice." The legislature then passed a statute authorizing circuit courts in the three largest classes of counties to increase the number of magistrate courts upon petition signed by 500 qualified residents. A petition signed by two qualified residents in a county of the smallest class was filed with the circuit court. In a proceeding to secure a writ of prohibition against the circuit court judge, the supreme court held, first, that the statutory requirement of 500 signatures was not a violation of the constitution but rather a reasonable implementation of it, even though the constitutional section involved was self-executing. This would have permitted the grant of the writ if the court had limited its opinion to the decision required. But the bulk of the opinion is concerned with the constitutionality of the provision limiting the power to create new courts of the three largest classes of counties. The court here ruled that this provision was invalid; yet since it was separable from the rest of the statute, the law should be read as if the words "in counties of more than 30,000 inhabitants" had never existed.[17] Nor did the court see any reason to modify this conclusion because the law made no provision for magistrates' salaries in this class of counties.

Legislative organization and procedure was the subject of three decisions. In one, it was held that a proposed constitutional amendment would not be invalidated by being given its third and final reading in the

[15] Kinett v. Mason, 206 S.W. (2nd) 789 (Tenn., Nov., 1947).

[16] State *ex rel.* Brooks *et al.* v. Eblen, 206 S.W. (2nd) 793 (Tenn. Nov., 1947).

[17] State v. Walden, 206 S.W. (2nd) 979 (Mo., Dec., 1947). Two justices dissented. On the power of judicial amendment of statutes, see also Rogan v. B. & O. R. Co., 52A (2nd) 261 (Md. App., Mar., 1947); Birmingham v. M & W. Min. Co., 180 P. (2nd) 615 (Kan., May, 1947).

house on the same day that it received its first reading in the senate under a constitutional provision which forbids more than one reading in a chamber on the same legislative day.[18] The second concerned the question of whether a state legislator may recover for room and meals, while attending the legislature, under sections of the constitution which require payment "while in attendance at regular or extra sessions of the legislature . . . for actual expenses incurred for room and meals . . . " Another article of the constitution limits compensation to three dollars *per diem*.[19] The answer depends on whether such expenses are governmental or personal, the former being allowable, while the latter are not. Governmental or official expenses include only those which "are necessary to enable the legislature to properly perform its function, while those that are personal are those that must be incurred by a member of the legislature in order to be present at the place of meeting . . . " Thus the statute giving a right of recovery for these expenses is unconstitutional. The last case concerns the power of the legislature to establish by statute a state legislative council, composed entirely of legislators, to function while the legislature is not in session.[20] Such councils have been established in fourteen states[21] to carry on investigation and research activities which will be of use in the ensuing legislative session. The court, in upholding the law, distinguishes between those cases which hold that the legislature lacks power to establish an interim committee by resolution to function after its adjournment and this case where the method of creation was by statute.

The nature of the presumption of validity attaching to the procedure of legislative bodies was discussed in only one case this year. Georgia was one of those states in which a properly enrolled act was conclusively presumed to have been enacted in accordance with all constitutional requirements.[22] Under the new 1945 constitution, however, it is provided with respect to local acts that notice of pendency of the bill be published for 60 days prior to its introduction and that a copy of such notice be attached to the proposed act. The judges held that since they could not go behind the enrolled bill, and since, as enrolled, the bill contained no such attachment, it was invalid.[23]

[18] Opinion of the Justices, 30 So. (2nd) 671 (Ala., May, 1947).

[19] Ferris v. Aten, 28 N.W. (2nd) 899 (Mich., Oct., 1947). One justice dissented, citing decisions in South Dakota, Tennessee, and Wyoming.

[20] State *ex rel.* Hamblen v. Yelle, 185 P. (2nd) 723 (Wash., Oct., 1947). Another issue involved is discussed under separation of powers below.

[21] Besides Washington, the other states are Connecticut, Illinois, Kansas, Kentucky, Maine, Maryland, Missouri, Nebraska North Dakota, Oklahoma, Pennsylvania, Rhode Island, and Virginia. See also Parker v. Riley, 18 Cal. (2nd) 83, 113 P. (2nd) 873 (1941), to the same effect with respect to a commission on interstate coöperation.

[22] See Foster H. Sherwood, "State Constitutional Law in 1946–47," in this REVIEW, Vol. 41, pp. 710–711 (1947).

[23] Smith v. McMichael, 45 S.E. (2nd) 431 (Ga., Dec., 1947). The act under at-

Limitations on the enactment of local or special acts were considered in several other decisions. In Maryland, the constitutional prohibition against enactment of such legislation as an emergency law was held not to prevent passage of an act enabling World War II veterans under 21 years of age to participate in the benefits of the federal Servicemen's Readjustment Act.[24] The court held that the legislative declaration of an emergency is conclusive on the courts; and that such a statute is not a special act merely because it affects a small group of people. "Such laws are not regarded as conferring 'special privilege' if there is a reasonable difference in the fact and circumstances between the class and the other citizens of the state." Of like kind is an Oklahoma case which held that an appropriation of money for a named county to compensate it for the disestablishment of a state prison farm was not a special act, since it was for part of a state-wide penal organization.[25] Accordingly, failure to publish notice of the introduction of a special act, required by the constitution, was not fatal. At the other extreme, the Tennessee supreme court held unconstitutional a statute which required a plaintiff in a civil action in the Knox county general session court to deposit costs with the clerk, while in other county courts action may be instituted by giving bond for costs.[26] A special case involved the attack brought against a Florida statute creating a port authority to operate a ferry under a constitutional prohibition of special laws for the establishment of ferries. Here the court was able to show that the power given extended only to ferries established or to be established under general law, so that the act creating the port authority, while local and special, was not unconstitutional.[27]

Closely associated with such provisions are constitutional prohibitions against the appropriation of state monies for gifts or special benefits. Again a "rule of reason" seems to be the guiding principle. Allocation by statute of a fixed share of the proceeds of a certain tax to a fireman's

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tack had been introduced under the old constitution, which had no such requirement, and was passed after the constitution of 1945 went into operation. The chief justice dissented from the opinion. See also State v. Nagel, 28 N.W. (2nd) 665 (N.D., Aug., 1947), where the question was discussed collaterally.

[24] Gebhart v. Hill, 54 A. (2nd) 315 (Md., July, 1947). To the same effect, Warner Bros. Pictures Inc. v. Brodel, 179 P. (2nd) 57 (Cal. App., Mar., 1947). See also People v. Howard, 74 N.E. (2nd) 513 (Ill., May, 1947); School Dist. v. Hodge, 183 P. (2nd) 575 (Okla., July, 1947); Caldwell v. Harris, 204 S.W. (2nd) 1019 (Tenn., Oct., 1947).

[25] Bd. of Commrs. v. Shaw, 182 P. (2nd) 507 (Okla., June, 1947).

[26] Kelley v. Byington, 206 S.W. (2nd) 409 (Tenn., Nov., 1947).

[27] State v. Fernandina Port Auth., 32 So. (2nd) 328 (Fla., Oct., 1947). The court indicates a willingness to ignore this limitation and question the decision in Cantwell v. St. Petersburg Port Auth., 155 Fla. 651, 21 So. (2nd) 139 (1945), holding unconstitutional a statute delegating power to establish a ferry. Cf. Cragar v. Thompson, 205 S.W. (2nd) 180 (Ark., Nov., 1947), in which a strict standard against special acts is applied.

relief and pension fund is not invalid, because it is for a public purpose and is construed as compensation for services previously rendered.[28] The public purpose principle is used also in upholding an unemployment insurance fund,[29] and state aid for low-rent housing.[30] But such a prohibition can be used as a canon of interpretation. Thus a statute which provided that the lessee of state-owned, tax-deeded land could buy the land at assessed value, or the board of county commissioners could put it up for public sale, did not give such a lessee a vested right to purchase if the board wished to sell publicly, since such an interpretation might authorize a gift to the lessee.[31]

The multiplicity of constitutional limitations on the law-making power, both procedural and substantive, produces confusion that can usually be resolved only with judicial restraint. Thus in South Carolina the legislature attempted to amend the 1942 code with respect to a provision which had been repealed in 1945 and reënacted in similar but not identical language. The court upheld the statute in view of the clear legislative intent, and in spite of the fact that technically it was an amendment to a repealed statute and therefore void.[32] Legislative intent was much less clear in an Oklahoma case. There the legislature passed a tax resale act changing the form of the tax deed and certain other provisions governing the transfer of tax-delinquent lands. The law was passed as emergency legislation, although the constitution forbade emergency legislation relating to purchase or sale of realty. The court proceeded to divide the statute into two parts: those provisions which could not go into operation at once under the constitutional prohibition, and those which could, to wit, changes in the form of the tax deed.[33]

Cases attacking the sufficiency of statutory titles were, as usual, brought in large numbers under constitutional requirements that legislative acts concern but one subject and that this be clearly expressed in the title. The general rule is simply that the title must not mislead the reader as to the contents of the statute. Attacks, usually unsuccessful, take three

[28] Wallace v. Childers, 180 P. (2nd) 1005 (Okla., May, 1947).

[29] Calif. Empl. Stab. Comm. v. Payne, 187 P. (2nd) 702 (Cal., Dec., 1947).

[30] *In re* Opinion of the Justices, 53 A. (2nd) 194 (N.H., May, 1947). See also Bloosky v. Redevel. Auth., 54A (2nd) 277 (Pa., July, 1947).

[31] State *ex rel.* Rich v. Garfield Co. *et al.*, 188 P. (2nd) 1004 (Mont., Jan., 1948). The assessed valuation of the land involved was $175. At public sale, it brought $1,000. This seemed to convince the court that sale at the former figure would be a gift. Compare Bd. of Commrs. v. Shaw, 182 P. (2nd) 507 (Okla., June, 1947), where state sale of land free of delinquent taxes previously used by the state, and on which counties had claims for delinquent taxes, was held not to be a gift, even though the state appropriated $20,000 to the county to compensate it for its loss.

[32] Taylor v. Marsh, 43 S.E. (2nd) 606 (S.C., July, 1947).

[33] Harris v. Dungan, 185 P. (2nd) 949 (Okla., Oct., 1947).

forms: either the title is claimed insufficient because it is too general;[34] or it is detailed without being exhaustive;[35] or the title implies things not included in the body.[36] With respect to the subject, the law may constitutionally refer to several things, providing they are germane to one another. Thus an act is not invalid which provides for the repeal of a town charter and for a liquidating agent to wind up its affairs.[37] However, such constitutional provisions give the courts a convenient excuse for occasionally invalidating legislation of which they disapprove. In Minnesota, the supreme court held an act unconstitutional in part because the title referred to the establishment of a merit system and the statute included provisions for disciplinary action.[38] And in Kentucky an act "relating to cities" was found invalid because its contents included reference to the incorporation of unincorporated communities.[39]

Unlike the federal government, state governments are rather closely limited by constitutional restrictions which are generally enforceable on the power to appropriate and spend money. Legislative attempts to provide for unforeseen contingencies and legislative errors must surmount many hurdles. One such attempt failed in Arkansas. The legislature failed to appropriate funds to pay the salaries of the director and other employees of the legislative council. When the state board of fiscal control attempted to allocate certain of its funds for this purpose, it was enjoined because its funds were appropriated only for emergencies.[40] Under similar provisions, it was held in Nebraska that legislative allocations of certain tax revenues to the State Assistance Fund did not establish a perpetual trust beyond the power of the legislature to recapture a part of the monies so allocated at a future date.[41] Elsewhere it was held that an

[34] A title reference to "punishment" was held to cover a provision for forfeiture in Haynes v. Sanford, 206 S.W. (2nd) 796 (Tenn., Nov., 1947). See also Mallard v. Texas St. Bd. of Exam., 203 S.W. (2nd) 778 (Tex. Civ. App., June, 1947); Elliott v. Fuqua, 204 S.W. (2nd) 1016 (Tenn., Oct., 1947); State v. Knight, 206 S.W. (2nd) 330 (Mo., Nov., 1947); Rein v. Johnson, 30 N.W. (2nd) 548 (Neb., Dec., 1947).

[35] See School Dist. v. Hodge, 183 P. (2nd) 575 (Okla., July, 1947), where the title was an almost complete index to the statute.

[36] Where the title referred to the sale of county obligations for the construction or alteration of county buildings, and the body of the act provided only for constructing school buildings and the purchase of land therefor, there was no deception, Doyle v. King, 44 S.E. (2nd) 608 (S.C., Oct., 1947). See also Carter v. Life and Casualty Ins. Co., 29 So. (2nd) 716 (La. App., Mar., 1947).

[37] Caldwell v. Harris, 204 S.W. (2nd) 1019 (Tenn., Oct., 1947).

[38] State *ex rel.* Finnegan v. Burt, 29 N.W. (2nd) 655 (Minn., Nov., 1947).

[39] Engle v. Bonnie, 204 S.W. (2nd) 963 (Ky., May, 1947).

[40] Director v. Mackrell, 204 S.W. (2nd) 893 (Ark., Oct., 1947).

[41] Rein v. Johnson, 30 N.W. (2nd) 548 (Neb., Dec., 1947). The constitution requires that appropriations unspent at the close of the fiscal quarter after the next legislative session revert to the general fund. The legislature here reallocated only a portion of such reverted funds.

appropriation could be constitutionally made in the form of a joint resolution signed by the governor.[42]

Financial limitations on the power of the state to engage in public works and improvements were involved in only two principal decisions. It was held that a constitutional limit of such works to a total cost of ten million dollars was not applicable to harbor improvements to be financed by bonds. Further, since the bonds were to be repaid only from the revenues derived from the improvements, the project did not violate the constitutional prohibition of a state debt except to repel invasion or suppress insurrection.[43] The other decision concerned the establishment of a county public hospital. By a statute of 1946, one county was designated as a hospital district with the power to issue bonds to be repaid from property tax revenues. The issuance of bonds was made conditional on approval by the residents of the district at an election. The same legislature also proposed a constitutional amendment to legitimatize its own statute.The amendment was approved in the November election and was confirmed by the legislature the following February. Meanwhile, the district was organized and held its election. In a taxpayer's suit, the court held that the original creation of the district was for a public purpose and therefore even then legitimate; that the district had not been delegated the power to tax, but only the ministerial task of fixing the amount needed to meet its obligations; that the district election was not premature, even though the constitutional amendment subsequently voted on referred to a vote "to be" held; that the omission from the statute that the members of the governing board shall be qualified electors is supplied by implication; and that the legislature may require the board members to be practicing physicians of the district, even though the general constitutional rule forbids the legislature to add to the qualifications of officers established therein.[44]

Constitutional limitations on the salary rate of state officers were the subject of only one decision. A constitutional section limiting the salaries of all state officers except the governor to not more than $5,000 was held not to apply to the faculty and administrative employees of the University of Kentucky, since the provision applies only to the regular executive, legislative, and judicial officers of the state and not to its employees.[45]

2. *Separation of Powers.* The judicial power received relatively slight attention this year. The Michigan one-man grand jury system was still being subjected to attack. The court held again that to create a circuit

[42] Bd. of Commrs. v. Shaw, 182 P. (2nd) 507 (Okla., June, 1947).

[43] Opinion of the Justices, 30 So. (2nd) 715 (Ala., May, 1947); State *ex rel.* Arn v. State Comm., 181 P. (2nd) 532 (Kan., June, 1947).

[44] McLure v. McElroy, 44 S.E. (2nd) 101 (S.C., Sept., 1947).

[45] Pardue v. Miller, 206 S.W. (2nd) 75 (Ky., Nov., 1947). See also Howard v. Saylor *et al.*, 204 S.W. (2nd) 815 (Ky., Oct., 1947).

court judge as a one-man grand jury does not confer on him non-judicial duties, although the case merely required dismissal since it took the form of an appeal from the dismissal of a suit for injunction by one circuit court against the judge of another circuit court.[46] In Illinois, it was held that since the power to disbar attorneys is inherently judicial, the supreme court may appoint attorneys to investigate under its rules without usurping non-judicial power, and that such appointees are not state officers nor do they perform judicial functions, so that absence of an oath is not fatal to their proceedings.[47]

The power to appeal and the form of review is a matter of legislative control in the absence of constitutional provisions. Yet the courts, while adhering to the rule, by reference to legislative intent, accomplish justice as they see it. Failure to give the guardian of an insane person the right of appeal from an action declaring the person restored to sanity was overcome by implication in one case.[48] Similarly, where the sole remedy is by appeal, and a writ of error is sought, the case may be treated as properly presented.[49] Yet the courts of two states expressly refused to act where justice and legislative intent were clear. In one, the court refused to prevent a husband from inheriting property of a wife whom he had murdered, since there was no express provision of law varying the rule of descent in such cases.[50] In the other, the court refused to authorize the escheat to the state of corporation property not required for carrying on its principal purpose.[51] The court arrived at this result by holding, first, that the constitutional prohibition was not self-executing; second, that such land titles acquired in violation of the statute passed to carry it into

[46] Kloka v. Brake, 27 N.W. (2nd) 507 (Mich., May, 1947). For the previous decision, see *In re* Slattery, 310 Mich. 458, 17 N.W. (2nd) 251 (1944); *cert.* denied 325 U.S. 876, 65 S.C. 1553 (1944). See Glenn R. Winters, "The Michigan One-Man Grand Jury," *Jour. Amer. Jud. Soc.*, Vol. 28, p. 137 (1945).

[47] *In re* Roth, 75 N.E. (2nd) 278 (Ill., Sept., 1947. Rehearing denied Nov., 1947).

[48] Cobb v. South Carolina Nat'l. Bank, 43 S.E. (2nd) 465 (S.C., July, 1947). The North Carolina court decided the other way in *In re* Sylivant, 212 N.C. 343, 193 S.E. 422 (1937), and it took a statute to change the rule. See *In re* Jeffress, 223 N.C. 273, 25 S.E. (2nd) 845 (1943). In Indiana, the court held that its rule governing appeals was changed by a statute which required a $50 deposit; that "appeal" could be construed to cover review of workmen's compensation decisions, Square D. Co. v. O'Neal, 72 N.E. (2nd) 654 (Ind., Apr., 1947). See also *In re* Diaz, 31 So. (2nd) 195 (La., May, 1947). See *contra*, City of Hutchinson v. Wagoner, 186 P. (2nd) 243 (Kan., Nov., 1947).

[49] People v. Cornelius, 74 N.E. (2nd) 900 (Ill. App., Sept., 1947). The writ of error was dismissed since the appeal was from an interlocutory, and not a final, ruling of the lower court.

[50] Crumley v. Hall, 43 S.E. (2nd) 646 (Ga., July, 1947).

[51] Texas Co. v. State *ex rel.* Coryell, 180 P. (2nd) 631 (Okla., Feb., 1947. Rehearing denied, May, 1947). Compare Levis v. N.Y. Life Ins. Co., 55A (2nd) 801 (Pa., Nov., 1947).

operation were voidable rather than void; and last, that the burden of proof was on the state rather than the corporation.

The leading case this year involving the separation of powers arose in West Virginia. There for some years the circuit courts have exercised the power to incorporate small towns and villages. Before 1901, the court was required to act favorably on the petition if all the requirements of the statute were met. In that year, the law was amended to give the courts discretion in the matter. By a uniform line of decisions, the supreme court held that this delegation of power "judicial and administrative, although in furtherance of the legislative department of the state government, is constitutional and valid."[52] It was, however, held also that the function was not so judicial as to permit review of incorporation proceedings by writ of error or other appellate process.[53] The present controversy arose when objections were raised to the incorporation of a town by a circuit court on writ of error, alleging that this act was the performance of a legislative function by the judiciary in violation of the separation principle.[54] With reference to jurisdiction, the court decided that the rule on the use of writ of error has been relaxed with reference to administrative bodies and should be relaxed in this case by analogy.[55] On the merits, however, the court was confronted by a recent decision holding unconstitutional an act which gave an appeal to the courts from the decisions of a public service commission.[56] The court confessed that this decision and its reasoning were in sharp conflict with the decisions on the statute in question. But in view of the fact that property rights depend upon the validity of these incorporations, it decided to follow the old rule. Evidently there are now two interpretations of the separation of powers in this state: a strict one for administrative bodies, and a loose one for courts performing administrative functions.

Meanwhile, in Maryland it was decided that a statute which delegated to circuit courts the power to issue liquor licenses and to the court of appeals the power to review their action on appeal conferred a non-judicial power on the judiciary in violation of the separation principle.[57] Yet in Minnesota it was held that a statutory appeal to the district court from an order of a county board fixing the salary of a sheriff is not unconstitu-

[52] *In re* Town of Union Mines, 39 W.Va. 179, 19 S.E. 398 (1894).

[53] Elder v. Incorporators of Central City, 40 W.Va. 222, S.E. 738 (1895). It was held in State v. Warden, 62 W.Va. 313, 58 S.E. 715 (1908), that the statutory change of 1901 did not alter the rule of these cases.

[54] *In re* Proposal to Incorporate Town of Chesapeake, 45 S.E. (2nd) 113 (W.Va., Oct., 1947).

[55] Citing West v. West Va. Fair Assoc., 97 W.Va. 10, 125 S.E. 353 (1924).

[56] Hodges v. Public Service Commission, 110 W.Va. 649, 159 S.E. 834 (1931).

[57] Cromwell v. Jackson, 52A (2nd) 79 (Md. App., Mar. 1947). Two justices dissented.

tional as conferring legislative functions on the judiciary.[58] Nor were legislative or non-judicial powers improperly delegated to the judiciary by statutes giving the probate courts jurisdiction to adjudge poor persons insane,[59] or criminal courts the power to fix minimum and maximum sentences.[60]

A statute making unlawful the commission of any act under color of authority as an officer of the state or of the United States when the act is not authorized by law was held to be so vague as to delegate legislative powers to the judiciary.[61] Finally, a statute requiring a court to grant a continuance when one of the attorneys has filed an affidavit that he is a member of the state legislature then in session and requiring his presence was interpreted to leave to the court the power to determine the facts attested to avoid the charge of unconstitutional legislative interference with the judiciary.[62]

The legislative branch and its powers was the subject of several important decisions. One of these concerned the validity of legislative records. The statute involved was passed in due form by the legislature and, according to an entry in the house journal, was transmitted to the governor on March 5. Under the constitution, he had five days in which to act, unless within that time the legislature adjourned, in which case he had 20 days. The governor vetoed the bill on March 28. A subsequent legislative investigation showed that the bill was delivered to the governor on March 10, and adjournment took place on the 13th. The court held that since the constitution did not require the entry to be kept, the court could go behind the journal and take as conclusive the receipt given by the governor's office to the legislative agent upon delivery of the bill.[63] In another case, the court held that the establishment of a legislative council or interim committee made up of members of the legislature who were to be paid expenses did not violate constitutional provisions forbidding employment of a legislator in an office created during his legislative tenure.[64] In Nebraska, the legislature raised the salaries of the governor and the members of the supreme court. The proper state officers requested a declaratory judgment on the question of when the increase was to go into effect, in view of constitutional prohibitions against increasing salaries of state officers during their incumbency. The court held that the increases became effective at once under a special constitutional

[58] Cahill v. Beltrami County, 29 N.W. (2nd) 444 (Minn., Oct., 1947).
[59] State *ex rel.* Kowats v. Arnold, 204 S.W. (2nd) 254 (Mo., June, 1947).
[60] People v. Reid, 72 N.E. (2nd) 812 (Ill., Mar., 1947).
[61] Locklin v. Pridgeon, 30 So. (2nd) 102 (Fla., Apr., 1947).
[62] Kyger v. Koesper, 207 S.W. (2nd) 46 (Mo., Nov., 1947).
[63] Whaley v. Ind. Co., 205 S.W. (2nd) 861 (Ark., Nov., 1947).
[64] State *ex rel.* Hamblen v. Yelle, 185 P. (2nd) 723 (Wash., Oct., 1947).

provision which fixed the salaries of these officers "until otherwise provided by law," since no such provision had ever been made.[65]

An Urban Redevelopment Authority was upheld against a blanket attack which included the charge that the statute creating it lacked sufficient standards and therefore delegated legislative power.[66] The statute was held to delegate merely the power to carry out the policy enunciated in the statute. Attacks on legislation delegating power to various bodies were considered in three other cases. In one it was held that the legislature could pass an income tax statute, the terms of which were made dependent on the outcome of a referendum on a sales tax law.[67] In another, the court found that delegation of power to a housing board to enter into contracts with local housing bodies was not the delegation of legislative power, since such action is required to be predicated on findings of fact beyond the competency of the legislature.[68] But an act delegating power to county commissioners to vary speed limits for automobiles from those fixed by state law was declared unconstitutional as a delegation of legislative power.[69]

With relation to the executive department, it was held that the establishment of a disabled ex-servicemen's board by a statute which required the governor to appoint the members of the board from a list of names submitted by the local American Legion did not unreasonably restrict the executive power of appointment, even though the board had only executive duties;[70] yet appointment, demotion, and dismissal are termed executive acts.[71] And elsewhere the appointment of legislative representatives from the district to a governing board for a local public improvement was held unconstitutional, both because the duties of the board were executive and therefore incompatible with legislative duties, and because the board was created by the legislature in which they served.[72]

[65] State *ex rel.* Johnson v. Marsh, 29 N.W. (2nd) 799 (Neb., Dec., 1947).

[66] Belovsky v. Redevel. Auth., 54A. (2nd) 277 (Pa., July, 1947).

[67] Marr v. Fisher, 187 P. (2nd) 966 (Ore., Dec., 1947).

[68] Long v. State, 42 S.E. (2nd) 729 (Ga., May, 1947).

[69] *In re* Opinion of the Justices, 53A (2nd) 194 (Mass., May, 1947).

[70] Elrod v. Willis, 203 S.W. (2nd) 18 (Ky., June, 1947).

[71] McCartin v. School Comm., 76 N.E. (2nd) 645 (Mass., Jan., 1948). This case held that the referendum did not apply to a resolution demoting certain school officers, since the resolution was an executive, not a legislative, act. Compare Guy v. Nelson, 44 S.E. (2nd) 775 (Ga., Oct., 1947), holding unconstitutional a statute governing removal of certain officers because it failed to provide for notice and hearing. Not so with respect to local government, however, Buttz v. Co. Ct., 72 N.E. (2nd) 225 (Ind., Apr., 1947).

[72] Ashmore v. Greater Greenville Sewer Dist., 44 S.E. (2nd) 88 (S.C., Aug., 1947). Unconstitutionality was also based in part on the fact that inclusion on the board of officers of the local service clubs violated the equal protection clause of the constitution. Bonds issued by the district were held to be valid obligations, however,

In Alabama, it was held that the governor could not appoint a legislative interim committee to advise him on needed legislation, unless authorized by statute, without performing legislative functions.[73] It was similarly declared elsewhere that the governor lacked the legislative authority to issue rules authorizing the courts in their discretion to stay judgments in eviction proceedings for more than the four months provided by law.[74]

The work of a civil service commission is not so executive in nature as to prevent its creation by a statute not assented to by the two-thirds vote of the legislature required for the creation of a new executive office, department, or agency.[75] The criterion of executive power used was the law enforcement power. Where an officer enforces the law against the general public, he performs an executive function; where he acts only with relation to government employees, the function is not executive, although it is not otherwise characterized.

In California, a somewhat unique case involving executive officers arose. The law prohibits punishment of a person under sentence who is found by a court to be insane. Upon conviction and delivery to the warden, the latter may suspend sentence pending determination of the convict's sanity by a superior court. But if the convict recovers his reason, the superintendent of the state hospital so informs the governor, who then is required to fix a day for the execution of the sentence without further judicial procedure. It was held that even if the superintendent's power is judicial, it may be constitutionally exercised under the provisions authorizing the legislature to provide a prison system and empower its agents as it sees fit.[76]

3. *Administrative Officers and Powers.* Once again the theory of the separation of powers is used in a substantial number of cases as a point of attack against the creation or functions of administrative bodies. This year, the courts upheld against such attacks statutes which established a wage board to fix minimum wages,[77] a board to license and regulate the taxicab business,[78] a board of veterinarians to license qualified grad-

since their issuance had been confirmed by the legislature. See also Fraysure *et al* v. Ky. Unemp. Comm., 202 S.W. (2nd) 377 (Ky., May, 1947).

[73] *In re* Opinion of the Justices, 32 So. (2nd) 539 (Ala., Nov., 1947).

[74] Opinion of the Justices, 75 N.E. (2nd) 234 (Mass., Oct., 1947).

[75] Sommerville v. Johnson, 30 N.W. (2nd) 577 (Neb., Jan., 1948). See *Ex parte* Pitt, 206 S.W. (2nd) 596 (Tex. Cr. App., Dec., 1947), where the power to issue and enforce conditional pardons was upheld likewise without characterizing the function.

[76] *Ex parte* Phyle, 186 P. (2nd) 134 (Cal., Nov., 1947). Two justices dissented. See *contra*, *Ex parte* Romero, 181 P. (2nd) 811 (N.M., June, 1947).

[77] Young v. Willis, 203 S.W. (2nd) 5 (Ky., June, 1947); Strain v. Southerton *et al.*, 74 N.E. (2nd) 69 (Ohio, June, 1947).

[78] Large v. City of Elizabethton, 203 S.W. (2nd) 907 (Tenn., July, 1947).

uates of schools recognized by the American Veterinary Medical Association,[79] a board to issue liquor licenses,[80] and a state board of water engineers to authorize changes in the use of appropriated waters of the state.[81] Although no act was invalidated on the ground that it improperly delegated legislative or judicial powers, the separation principle was used to invalidate administrative action as *ultra vires* in several cases. In one, the court held that a legislative act authorizing a zoning board of adjustment to grant or deny exceptions to the zoning ordinances was constitutional only if it was interpreted to prevent the board from permitting a theatre parking lot to operate in a residential zone.[82] The same result was reached in a similar case with respect to an order denying petitioners' request to erect outdoor billboards in a residential district.[83] On the other hand, the rule-making power of administrative bodies was upheld against the charge that it constituted the power to legislate also with respect to rules of the Ohio Utilities Commission designed to maintain standards of railroad employee safety and welfare.[84]

A special situation involving administrative rules arose in Missouri. The court there upheld an order of a police commission forbidding policemen to become members of labor unions.[85] Such a rule was held, under circumstances of labor methods of which the court took judicial notice, not to be unreasonable. On the same day, the same court held that statutes delegating to municipalities power to fix conditions of employment for their employees could not be construed to authorize collective bargaining agreements between a city and its employees without violating the separation principle.[86] For, it was said, that principle applied to municipal governments which could not abdicate their legislative

[79] Permenter v. Younan, 31 So. (2nd) 387 (Fla., July, 1947). The court implied that the standards of the law were adequate only because the business involved was a privilege and not a right.

[80] Allen v. St. Bd. of Veterinarians, 52A. (2nd) 131 (R.I., Mar., 1947).

[81] Clark v. Briscoe Irr. Co., 200 S.W. (2nd) 674 (Tex. Civ. App., Feb., 1947. Rehearing denied, Mar., 1947). Problems of water use were also considered under special constitutional provisions in state *ex rel.* St. Game Comm. v. Red River Valley Co., 182 P. (2nd) 421 (N.M., Sept., 1945. Rehearing denied Mar., 1946, and June, 1947); City of Pasadena v. City of Alhambra, 180 P. (2nd) 699 (Cal. App., May, 1947).

[82] Texas Cons. Theatres, Inc., v. Pettillo *et al.*, 204 S.W. (2nd) 396 (Tex. Civ. App., June, 1947. Rehearing denied Sept., 1947).

[83] United Adv. Corp. v. Bd. of Adj., 56A (2nd) 406 (N.J., Dec., 1947). In this case, the order was issued under a provision of the law which was declared invalid as bearing no relation to the purpose of zoning. To the same general effect was Bernstein v. Smutz, 188 P. (2nd) 48 (Cal. App., Dec., 1947). See *contra*, Commonwealth v. Slome, 75 N.E. (2nd) 517 (Mass., Nov., 1947).

[84] Akron & B.L.R. Co. v. Pub. Util. Comm., 74 N.E. (2nd) 256 (Ohio, July, 1947).

[85] King v. Priest, 206 S.W. (2nd) 547 (Mo., Nov., 1947).

[86] City of Springfield v. Clouse, 206 S.W. (2nd) 539 (Mo., Nov., 1947).

responsibilities.[87] Under the latter reasoning, it is difficult to see how a board rule could be upheld.

A special case arose in Oklahoma where the corporation commission is established in the constitution and endowed with executive, legislative, and judicial power. Here an order regulating airlines was held to be invalid even though authorized by statute, since the constitution authorized only regulation of transportation companies without specifically including airlines.[88] Contrariwise, where a commission is established in the constitution, its rules prevail over contradictory statutes.[89] In another unique case, it was held that a statute authorizing the licensing of photographers did not give the licensing board power by implication to enforce the law either by instituting criminal action or by seeking to enjoin practice without a license.[90]

In only three other cases was such a challenge successful. In one, the court held that an order of a local board of health forbidding the feeding of garbage to animals was invalid to the extent that it permitted the health commissioner to grant special exceptions.[91] Here, however, the conclusion was based on the court's conviction that the business of collecting and disposing of garbage was not in itself a nuisance and could be regulated, although the opinion urged the absence of standards in the order to guide the commissioner's discretion as the basis of the decision. In the other case, the statute involved authorized county school reorganization committees to regulate the establishment of school districts. Since the constitution imposed the obligation of providing a uniform system of schools on the legislature specifically, and since the committees were of statutory origin only, such delegation was an illegal grant of legislative power.[92] In the last case, it was held that a statute prohibiting the manufacture and sale of adulterated foods could not be interpreted to authorize a health officer to issue an order forbidding the adulteration of soda water with saccharin.[93]

As a canon of interpretation, it was held that to imply a power in a

[87] Compare Dierup v. Louisville, etc. Bd., 200 S.W. (2nd) 300 (Ky., Mar., 1947), holding that the separation principle does not apply to local government.

[88] Application of Central Airlines, Inc., 185 P. (2nd) 919 (Okla., Oct., 1947); followed in Application of Spartan Airlines, 185 P. (2nd) 925 (Okla., Oct., 1947).

[89] State *ex rel.* Griffin v. Sullivan, 30 So. (2nd) 919 (Fla., May, 1947).

[90] Montana St. Bd. of Exam. v. Keller, 185 P. (2nd) 503 (Mont., Oct., 1947). See *contra* Pa. Pub. Util. Comm. v. Israel *et al.*, 52A (2nd) 317 (Pa., Mar., 1947).

[91] Weber v. Bd. of Health, 74 N.E. (2nd) 331 (Ohio, Aug., 1947).

[92] State v. Hines, 182 P. (2nd) 865 (Kan., June, 1947). The court distinguished this case from State *ex rel.* Rosensthal v. Storey, 144 Kan. 311, 58 P. (2nd) 1051 (1937), a case approving the grant of legislative power to the school superintendent, since the latter office is established by the constitution, which also authorizes the legislature to add to its duties by statute.

[93] Margolin v. State, 205 S.W. (2nd) 775 (Tex. Cr. App., Oct., 1947).

utilities commission to direct a respondent to renew a lease for the use of property not needed by the carrier would violate due process of law.[94] And elsewhere it was held that a licensing board could be enjoined from threatening to prosecute cosmetologists who operated without barber's licenses which the court said they were not required to have.[95]

Administrative procedure received frequent and widespread notice this year. On the whole, the trend seems to be in the direction of approving administrative variations of judicial procedure. A board of adjustment was held to have power under the law and its own rules to make an award in a case where the award was previously denied.[96] A beer-licensing body was held to have a reasonable power implied to issue procedural rules governing the method and form for submitting petitions.[97] However, an administrative body may be bound by its own rules of procedure, even to the point where they cannot be changed. Where the rule determines the method of computing penalties under a franchise tax law, and the statute under which the interpretive rules were issued is reënacted without change, the rule becomes in effect a part of the statute itself.[98] Evidently as procedural matters approach or affect substantial rights, administrative discretion tends to disappear. So a rule of a workmen's compensation commission fixing a conclusive presumption that the loss of a part of a finger meant the loss of use of the entire finger was beyond its power.[99] The court held that the rule-making power given the commission was limited only to procedural matters by the separation principle, and that the true burden of proof in this case must remain on the claimant. So also with respect to an administrative order providing for various types of veterinarian licenses. It was held that since the statute provided only for licensing qualified veterinarians, the board could not issue one kind of license to a graduate of a school recognized by the U. S. Bureau of Animal Husbandry, and another to graduates of schools not so recognized.[100] Yet a corporation commission was found to have power to authorize rate

[94] Bohn Lumber Prod. Co. v. Mich. Pub. Serv. Comm., 26 N.W. (2nd) 875 (Mich., Apr., 1947).

[95] Jeffs v. Bd. of Exam., 30 N.W. (2nd) 445 (Mich., Jan., 1948).

[96] State *ex rel.* Carmichael v. St. Bd., 32 So. (2nd) 216 (Ala., Oct., 1947). After denial, the petitioners secured a judgment in a personal action against the state officers which evidently persuaded the board of its error.

[97] Gattinburg Beer Req. Comm. v. Og'e, 206 S.W. (2nd) 891 (Tenn., Nov., 1947. Rehearing denied Jan. 16, 1948).

[98] Gulf Union Oil Co. v. Isbell *et al.*, 205 S.W. (2nd) 105 (Tex. Civ. App., Oct., 1947).

[99] Southern Co-op Foundry Co. v. Drummond, 45 S.E. (2nd) 687 (Ga. App., Dec., 1947). See also Allen v. Martin Co., 52A (2nd) 605 (Md. Apr., 1947).

[100] Robertson v. Schein, 204 S.W. (2nd) 954 (Ky., Oct., 1947). Compare Allen v. St. Bd. of Vet., cited note 85 above.

changes going into effect within the normal 30-day period following filing of notice of proposed change with the commission.[101]

The right to notice may be waived by actual appearance,[102] and where personal notice is given, statutory notice by publication becomes directive rather than mandatory.[103] With respect to evidence included in the record, it was held that where the record showed constant reference to the fact that petitioner had published notice of a proposed rate increase, and no question was raised at the time, no error was involved in admitting exhibits to prove such notice into the record after the hearing was closed.[104] An administrative body denies proper notice to a party when its determination is based on facts gathered in another proceeding, no matter how closely it may parallel the existing one.[105] Although a statute which provides for notice and an opportunity to be heard only after a final order is invalid as concerns the removal of an elected constitutional officer,[106] so long as the full hearing precedes the final order or decree, the constitutional right to a hearing does not prevent a court from appointing an administrative body as a referee to prepare a recommendation, nor such a referee from excluding all or part of the evidence presented by the parties.[107] But the hearing must be on issues known to the parties. Thus when the law requires publication of a plan of school district organization and provides for an appeal to the superintendent, the latter officer may not so modify the proposed plan in affirming it as to promulgate what is in effect an entirely new plan.[108] Nor does a statute giving a utilities commission power to rescind or alter certificates of convenience and necessity authorize recission without a full and complete hearing under the claim that the certificate is merely being modified.[109]

[101] Bd. of Sup. v. Comm. *ex rel* C. & P. Tel. Co., 45 S.E. (2nd) 145 (Va., Nov.' 1947).

[102] Black Hawk Motor Trans. Co. v. Ill. Comm. Comm., 76 N.E. (2nd) 478 (Ill., Nov., 1947. Rehearing denied Jan. 15, 1948).

[103] State *ex rel* Lindell Tower Apt. Inc. v. Guise, 206 S.W. (2nd) 320 (Mo., Dec., 1947).

[104] Bd. of Sup. v. Com. *ex rel* C. & P. Tel. Co., 45 S.E. (2nd) 145 (Va., Nov., 1947).

[105] State *ex rel* Wright v. Morrison, 75 N.E. (2nd) 106 (Ohio App., Feb., 1947); Ventresca v. Exley, 56A (2nd) 210 (Pa., Jan., 1948).

[106] Guy v. Nelson, 44 S.E. (2nd) 775 (Ga., Oct., 1947). Compare Baxter v. Land Const. Co., 206 S.W. (2nd) 325 (Mo., Dec., 1947), where the order which was not final could precede the hearing. And the administrative decision may be made final prior to judicial review if a hearing has been given. State *ex rel* Aikens v. Davis, 45 S.E. (2nd) 486 (W.Va., Nov., 1947); Baldwin v. City of Lawton, 185 P. (2nd) 699 (Okla., Apr., 1947).

[107] City of Pasadena v. City of Alhambra, 180 P. (2nd) 699 (Cal. App., May, 1947).

[108] Smith v. Ray, 72 N.E. (2nd) 921 (Ohio App., Apr., 1947).

[109] Black Hawk Motor Trans. Co. v. Ill. Comm. Comm., 76 N.E. (2nd) 478 (Ill., Nov., 1947. Modified on denial of rehearing, Jan., 1948).

Where some procedural error has been committed by the administrative body, the court is not authorized to complete the administrative act, but must remand the case,[110] unless all parties waive the privilege—in which case the court may assume the administrative function and complete the hearing.[111] But when the statute does not require an administrative record, the reviewing court must presume the existence of supporting evidence.[112]

The normal rule requiring the exhaustion of administrative remedies before resort to the courts was ignored in one important case. The court held that the judiciary had authority to direct the issuance of a license on the basis of evidence before it which was not before the administrative licensing body, since, the court was convinced, if the new evidence had been before the latter agency, it would not have produced affirmative action there.[113]

The form for securing judicial review was discussed in several cases. In one involving the use of the writ of habeas corpus, it was held that this remedy lay to test the validity of an order committing a party for contempt of an administrative tribunal, since the statutory review provided applied only to the substantive decisions of the commission.[114] Another case concerned review by certiorari. There it was held that such review must be limited to questions of jurisdiction and regularity of proceedings, since the statute expressly forbids appeal.[115] Presumably, in the absence of such a prohibition, review could include reference to the merits. In another case, mandamus was found available to compel a fiscal court to fix salaries of local officers, but not to compel any particular salary rate.[116]

The scope of judicial review of administrative action is always a difficult problem. It is particularly so under some of the new uniform administrative procedure and review acts and constitutional provisions appearing in recent years in various states. In Missouri, for example, the constitution directs the court to review the questions of, first, whether

[110] State *ex rel* Wright v. Morrison, 75 N.E. (2nd) 106 (Ohio App., Feb., 1947); Ft. Howard Paper Co. v. San. Dist., 26 N.W. (2nd) 661 (Mo., Apr., 1947).

[111] Langer v. State, 28 N.W. (2nd) 523 (N.D., May, 1947). Compare Skyline Swannada Inc. v. Nelson Co., 44 S.E. (2nd) 437 (Va., Oct., 1947), where the court reassessed property improperly assessed by the county board, although no waiver existed.

[112] Ft. Howard Paper Co. v. San. Dist., 26 N.W. (2nd) 661 (Wis., Apr., 1947).

[113] Peterson v. Livestock Comm., 181 P. (2nd) 152 (Mont., May, 1947).

[114] Loustalot v. Sup. Ct., 186 P. (2nd) 673 (Cal., Nov., 1947).

[115] Metcalf v. Howard, 201 S.W. (2nd) 197 (Ky., March, 1947). Compare Him Pay Lim v. Duncan, 181 P. (2nd) 357 (Ariz., June, 1947); *Ex parte* Krasner, 32 So. (2nd) 678 (Ala., Nov., 1947).

[116] Kaufman Const. Co. v. Holcomb, 55A (2nd) 534 (Pa., Nov. 1947). The tribunal involved was one for arbitrating claims against the state, and thus involved no rights. Compare Rosenbaum v. Ind. Comm., 185 P. (2nd) 511 (Utah, Oct., 1947).

the order is supported by substantial evidence and, second, whether it could have been arrived at reasonably on the basis of the entire record. The usual rule is limited only to the first standard.[117] Under the new rule, the court finds no difficulty in imposing on workmen's compensation commissions common law rules concerning *res gestae*, hearsay, etc., and reconsidering the evidence in detail.[118] Jurisdictional questions, however, are always open for judicial redetermination. Such questions include: whether a commission may fix rates for a single community in the light of evidence of the entire operations of the utility in the state;[119] the question of whether an employee injured on his way home from making a sale by violating employee rules was injured in the course of his employment;[120] whether employees of a subcontractor were employees of the employer who let the original contract for purposes of workmen's compensation;[121] whether unemployment benefits can be paid employees who remain unemployed after a partial resumption of work and termination of a strike;[122] and whether a widow committed to a state hospital was a dependent within the workmen's compensation act.[123]

4. *Local Government.* Contrary to last year's tendency to uphold local laws passed by the state legislature against the state constitutional requirement of general acts whenever possible, a number of such special laws were declared invalid this year. Three acts applying only to one county of the respective states—two of them technically based on a population classification and only one specifically naming the county—were declared invalid in direct contravention of last year's pronouncements upholding such classifications.[124] An act which by express terms does not apply to five named counties[125] and a law making special provisions for towns operating fire-fighting equipment before the passage of such act[126] were also declared unconstitutional.

[117] Railroad Comm. v. Shell Oil Co., Inc., 206 S.W. (2nd) 235 (Tex., Nov., 1947); Carnegie-Ill. Steel Co. v. Rev. Bd., 72 N.E. (2nd) 662 (Ind. App., May, 1947); City of San Diego v. St. Bd., 186 P. (2nd) 166 (Cal. App., Nov., 1947).

[118] Goetz v. Carson Co., 206 S.W. (2nd) 530 (Mo., Dec., 1947); Moore v. Int. Shoe Co., 205 S.W. (2nd) 930 (Mo. App., Nov., 1947); Laforge v. Coglizer Tent & Awn. Co., 205 S.W. (2nd) 957 (Mo. App., Nov., 1947).

[119] Bd. of Sup. v. Comm. *ex rel* C. & P. Tel. Co., 45 S.E. (2nd) 145 (Va., Nov., 1947).

[120] Brown v. Weber Imp. & Auto Co., 206 S.W. (2nd) 350 (Mo., Nov., 1947).

[121] Rosenbaum v. Ind. Comm., 185 P. (2nd) 511 (Utah, Oct., 1947).

[122] Carnegie-Ill. Steel Co. v. Rev. Bd., 72 N.E. (2nd) 662 (Ind. App., May, 1947).

[123] Gebbs Gas Engine Co. v. Jackson, 31 So. (2nd) 51 (Fla., June, 1947).

[124] Wehrman v. Steltenkamp, 200 S.W. (2nd) 949 (Ky., Mar., 1947); Christian v. Moreland, 45 S.E. (2nd) 201 (Ga., Nov., 1947); Bandy v. State, 204 S.W. (2nd) 819 (Tenn., Oct., 1947). But compare Sherwood, *op. cit.*, p. 721.

[125] Davis v. Bd. of Education of Coffee County, 45 S.E. (2nd) 429 (Ga., Nov., 1947).

[126] Hayes v. Taxpayers Research Ass'n., 72 N.E. (2nd) 658 (Ind., Apr., 1947).

On the other hand, an act applying only to one city,[127] an act applying only to counties having in excess of a certain number of inhabitants,[128] a school district resolution taxing coal mined by the stripping method when there is only one such mine in the district,[129] and statutes providing for a manager form of government for towns and cities,[130] were upheld as not violative of this constitutional prohibition. The extension of boundaries of cities and towns[131] and a law dealing with procedural aspects of a divorce action[132] were held to be exceptions to the prohibition against local or special legislation.

Legislative appropriation of county "surplus" funds is not required in South Carolina; if the money in question rightfully belongs to a private person, it may be recovered on mandamus.[133] A debt of a municipality, if valid when created, cannot be invalidated by subsequent illegal expenditures.[134] In North Carolina, the county board of commissioners, rather than the county board of education, has the duty of determining the expenditures to be made for school buildings, and has exclusive control of the school sinking fund surplus.[135] Similarly, the board of supervisors may administer trust property to be used for the purpose of education, but it may not sell such property at a grossly inadequate price.[136] Neither cities nor counties have a vested interest in gratuity moneys from the state highway revenues, and the legislature may distribute such money as it pleases.[137]

Municipal corporations possess no inherent power of taxation; such power stems from statutes or the state constitution.[138] State, county, and district taxes must be expended for state, county, or district purposes, and cannot be used for purposes of another unit, except in the distribution to counties of taxes on pari-mutual pools,[139] or where one unit is a part of

[127] Settle v. Jones, 206 S.W. (2nd) 59 (Ky., Nov., 1947).

[128] Nichols v. Pirkle, 43 S.E. (2nd) 306 (Ga., June, 1947).

[129] English v. School Dist. of Robinson Twp., 55A. (2nd) 803 (Pa., Nov., 1947).

[130] State *ex rel.* Keefe v. McInerney, 182 P. (2nd) 28 (Wyo., June, 1947).

[131] *In re* Opinion of the Justices, 31 So. (2nd) 309 (Ala., June, 1947).

[132] Hunt v. Cook County, 76 N.E. (2nd) 48 (Ill., Nov., 1947). See also Nashville Electric Service v. Luna, 204 S.W. (2nd) 529 (Tenn., Oct., 1947) and Herman v. Mayor, 55A. (2nd) 491 (Md., Nov., 1947), on conflict between local and general laws.

[133] Foster v. Taylor, 42 S.E. (2nd) 531 (S.C., Apr., 1947).

[134] City of Winchester v. Winchester Bank, 205 S.W. (2nd) 997 (Ky., Oct., 1947).

[135] Johnson v. Marrow, 44 S.E. (2nd) 468 (N.C., Oct., 1947).

[136] Koonce v. Bd. of Sup., 32 So. (2nd) 264 (Miss., Oct., 1947).

[137] Clayton v. City of Little Rock, 204 S.W. (2nd) 145 (Ark., June, 1947).

[138] Certain Lots v. Town of Monticello, 31 So. (2nd) 905 (Fla., July, 1947, on rehearing); First Nat'l. Bank of St. Joseph v. Buchanan County, 205 S.W. (2nd) 726 (Mo., Nov., 1947).

[139] Prescott v. Bd. of Public Instruction of Hardee County, 32 So. (2nd) 731 (Fla., Nov., 1947).

another unit to such an extent that they can be said to constitute a single unit.[140] Taxes can be levied only for "public purposes," and the acquisition or construction of a hotel by a town is not a "public purpose,"[141] while the construction of a public auditorium or the purchase or construction of public utilities is such.[142]

The constitutional limit on borrowing by municipalities cannot be circumvented by the creation of a new taxing district for some special purpose within the old district,[143] but the limit may be extended under temporary emergency conditions if the legislature so authorizes.[144] Bonds may be issued by a municipality without an approving vote of the population where there is no pledging of the taxing power for the repayment of the bonds.[145] However, if the people so decide by a vote, a tax may be levied to pay for bonds issued for a corporate purpose.[146] Bonds bearing a fixed rate of interest for a definite term, and containing no provision for redemption before maturity, may not be refunded by the issuance of bonds bearing lower interest.[147]

The legislature may extend or limit the boundaries of school districts, consolidate two or more districts, abolish them, or create new ones.[148] The legislature may not, however, designate the whole state itself as a school district in order to divert appropriations for the maintenance of other state institutions to such districts.[149] School districts are public corporations endowed with governmental power to perform the public duties of providing public schools, and the legislature may prescribe the manner of their government.[150] Nevertheless, a city may collect certain inspection fees for inspection of equipment from the school district.[151]

An elective officer of a municipality may retain his office although he was convicted of an offense which is a felony under federal law, but only a

[140] People *ex rel.* Schlaeger v. Jarmuth, 75 N.E. (2nd) 367 (Ill., Sept., 1947).

[141] Nash. v. Town of Tarboro, 42 S.E. (2nd) 209 (N. C., Apr., 1947); see also Tamiami Trail Tours v. City of Tampa, 31 So. (2nd) 468 (Fla., July, 1947).

[142] Cothran v. Mallory, 45 S.E. (2nd) 599 (S.C., Dec., 1947); Sharp v. Hall, 181 P. (2nd) 972 (Okla., June, 1947).

[143] Cerajewski v. McVey, 72 N.E. (2nd) 650 (Ind., Apr., 1947).

[144] Opinion of the Justices, 52A. (2nd) 297 (N. H., Mar., 1947).

[145] Zinnen v. City of Fort Lauderdale, 32 So. (2nd) 162 (Fla., Oct., 1947).

[146] People v. Chicago & N.W. Ry. Co., 74 N.E. (2nd) 510 (Ill., May, 1947).

[147] Martin v. Mayor, 32 So. (2nd) 711 (La., July, 1947).

[148] State *ex rel.* Miller v. Common School Dist., 185 P. (2nd) 677 (Kan., Oct., 1947); Opinion of the Justices, 32 So. (2nd) 303 (Ala., Sept., 1947); State *ex rel.* Heppe v. Zilafro, 206 S.W. (2nd) 496 (Mo., Dec., 1947). See Independent Consol. School Dist. v. Bowen, 183 P. (2nd) 251 (Okla., July, 1947), on liability of annexing district.

[149] Bd. of Ed. v. Elliot, 29 N.W. (2nd) 902 (Mich., Dec., 1947).

[150] Muehring v. School Dist., 28 N.W. (2nd) 655 (Minn., July, 1947).

[151] Kansas City v. School Dist., 201 S.W. (2nd) 930 (Mo., Apr., 1947).

misdemeanor under state law.[152] Where a vacancy occurs for an elective office and the county board of elections fails to print ballots designating this office at the general elections, the voters may write in a candidate; if he obtains a certificate of election from the election board, he can fill the vacant office.[153] No person may serve as a state officer and a municipal employee simultaneously.[154] An officer of a municipality does not have a vested right in the manner in which his duties shall be performed, and the state may change these.[155] On the other hand, certain duties, conferred by common law and then embodied in the state constitution—such as the sheriff's duties as custodian of the court house and county criminal court building—cannot be taken away by statute.[156]

The legislature may delegate certain of its prerogatives, particularly those of a local regulatory nature, to the municipalities;[157] zoning falls into this category. Most of the challenged zoning ordinances were upheld as being reasonable,[158] but an amendment to a long-standing zoning ordinance which had allowed such buildings (forbidding two-family dwellings) was declared unreasonable, as the amendment was passed immediately after a corporation had bought realty in a zone for that purpose.[159]. A statute granting municipalities and counties the power to punish violations of ordinances with penalties other than forfeitures and imprisonment was similarly held invalid.[160] But the installation of parking meters by local governments was approved in two cases.[161]

Urban areas which are contiguous should be consolidated under a single municipal government, by annexation statutes if necessary.[162] But there is no insurmountable barrier to permitting a village to acquire park property within the limits of another village, even without the latter's

[152] State *ex rel.* Arpagaus v. Todd, 29 N.W. (2nd) 810 (Minn., Nov., 1947).

[153] State *ex rel.* Shriver v. Bd. of Comm., 74 N.E. (2nd) 248 (Ohio, July, 1947).

[154] Williams v. Bd. for Children's Home, 204 S.W. (2nd) 490 (Ky., May, 1947).

[155] State *ex rel.* Prahlow v. City of Milwaukee, 30 N.W. (2nd) 260 (Wis., Dec., 1947).

[156] People *ex rel.* Walsh v. Bd. of Com'rs of Cook County, 74 N.E. (2nd) 503 (Ill., May, 1947).

[157] Spoone v. Mayor, 206 S.W. (2nd) 422 (Tenn., Dec., 1947); Wallace v. Childers, 180 P. (2nd) 1005 (Okla., May, 1947); Rich v. Rosenshine, 45 S.E. (2nd) 499 (W.Va., Nov., 1947).

[158] Carroll v. Arlington County, 44 S.E. (2nd) 6 (Va., Sept., 1947); Fairfax v. Parker, 44 S.E. (2nd) 9 (Va., Sept., 1947); Portage Twp. v. Full Salvation Union, 29 N.W. (2nd) 297 (Mich., Oct., 1947).

[159] De Mott Homes v. Margate City, 56A. (2nd) 423 (N.J., Dec., 1947).

[160] State *ex rel.* Keefe v. Schmiege, 28 N.W. (2nd) 345 (Wis., June, 1947).

[161] Porter v. City of Paris, 201 S.W. (2nd) 688 (Tenn., May, 1947); Deaderick v. Parker, 200 S.W. (2nd) 787 (Ark., Mar., 1947).

[162] Norfolk Co. v. City of Portsmouth, 45 S.E. (2nd) 136 (Va., Nov., 1947); Spence v. Watson, 186 P. (2nd) 785 (Ore., Nov., 1947).

consent;[163] for the powers of local government depend on statute, and are not as a rule inherent.[164] Where a city is also a county by statute, however, the city council may act as a county court, although not specifically authorized by statute.[165] The local government may have imposed on it a variety of involuntary obligations, including the cost of acquiring the right of way for a state highway through the county.[166]

5. *Political Processes.* The procedure for altering state constitutions was subject to attack in four cases, all unsuccessfully. The courts in general seem disposed to construe procedure for such purposes liberally wherever possible. The Kentucky court upheld the legality of procedure for submitting to the people the question of whether a constitutional convention should be called. The constitution requires that notice of such an election must be given, but the legislature, in its act submitting the question, made no such provision. The court held that since the secretary of state gave 78 days notice, the constitution was complied with, even though a single amendment would require 90 days notice.[167] The validity of an amendment was upheld against an attack referring to the constitutional requirement of inclusion of the full change on the petitions. The court held that this should not be interpreted to require inclusion of more than the new amendment and the provision or provisions which it would replace.[168] The court also said that whatever procedural irregularities there might have been were cured by the adoption of the amendment if the people were adequately informed of the question before them. In fact, in one state the supreme court issued a writ of prohibition to halt consideration of the sufficiency of a petition for a constitutional amendment in a lower court on the ground that by adoption of the amendment the question was made political.[169] The same court held that such provisions of the constitution are sufficiently self-executing to authorize the secretary of state to spend money for such purposes even though not appropriated by the legislature.[170]

[163] Village of St. Clair Shores v. Village of Grosse Point Woods, 29 N.W. (2nd) 860 (Mich., Dec., 1947).

[164] Malley v. Throckmorton, 206 S.W. (2nd) 455 (Ark., Dec., 1947), disallowing the establishment of a fire department not authorized by statute. See also Almquist v. City of Biwabik, 28 N.W. (2nd) 744 (Minn., Aug., 1947); Brooklyn Apts. v. Mayor, 55A. (2nd) 500 (Md., Nov., 1947).

[165] State *ex rel.* Hart v. City of St. Louis, 204 S.W. (2nd) 234 (Mo., July, 1947).

[166] Dept. of Hwys. v. Parker, 206 S.W. (2nd) 73 (Ky., Nov., 1947).

[167] Gaines v. O'Connell, 204 S.W. (2nd) 425 (Ky., Sept., 1947). This holding was coupled with a warning that the procedure of the convention must conform to the provisions of statute providing for it.

[168] City of Jackson v. Nims, 26 N.W. (2nd) 569 (Mich., Apr., 1947).

[169] Renck v. Sup. Ct., 187 P. (2nd) 656 (Ariz., Dec., 1947).

[170] Crozier v. Frohmiller, 179 P. (2nd) 445 (Ariz., Apr., 1947).

The same attitude can be observed in the cases challenging the validity of local elections. If the petition calling for the election is valid on its face and the election has been held, the courts will not go behind the results except to determine whether the procedure used was fairly calculated to inform the voter,[171] or whether the subject was one upon which an election must be held.[172] Only where the election has not yet been held will the court look into the adequacy of the petition as well as the constitutionality of the proposed measure.[173] Even when the election has been held, the intent of the voters may be used to construe the measure adopted. Intent, however, is not always clear. Where the electors approved a bond issue which was not made for nineteen years because of economic difficulties, the Michigan court held the issue could still be made, even though qualifications for voting had changed in the meantime.[174]

With respect to the right to vote, new cases hold that a constitutional and statutory provision that students shall not be deemed to have lost their regular residence by reason of living away from home during school attendance does not operate to prevent veteran student residents of a campus housing development from acquiring a residence there for voting purposes.[175]

Elections received attention in only two decisions. In one it was held that a constitutional provision giving the party power to impose qualifications on voters in primary elections authorized the party to fix a reasonable property-holding qualification for the candidates in the primary.[176] In the other, the court held that the votes cast for an ineligible candidate for office must be taken into account and may prevent the certification of another eligible candidate as elected where the latter received neither a majority nor a plurality.[177]

II. CIVIL RIGHTS

1. *Freedom of Speech, Press, and Assembly.* Constitutional limits of this character on local licensing and regulatory statutes appear to be sufficiently well established to avoid litigation. Only one ordinance designed to prohibit unnecessary noise was challenged, unsuccessfully, this year.[178]

Where regulation of labor activities is concerned, however, the stand-

[171] People v. Berdsong, 76 N.E. (2nd) 185 (Ill., Nov., 1947); Dye v. Council, 182 P. (2nd) 623 (Cal., App., June, 1947).

[172] State v. City of Jacksonville, 31 So. (2nd) 385 (Fla., July, 1947). See also Sanders v. Greater Greenville Sewer Disk., 44 S.E. (2nd) 185 (S.C., Sept., 1947).

[173] State *ex rel.* Keefe v. McInerney, 182 P. (2nd) 28 (Wyo., June, 1947).

[174] Quaid v. City of Detroit, 29 N.W. (2nd) 687 (Mich., Dec., 1947).

[175] Robbins v. Chamberlain, 75 N.E. (2nd) 617 (N.Y., Oct., 1947).

[176] Yuratich v. Plaquemines Parish Dem. Comm., 32 So. (2nd) 647 (La. App., Nov., 1947).

[177] Ramsey v. Dunlop, 205 S.W. (2nd) 979 (Tex., Nov., 1947).

[178] Konacs v. Cooper, 52 A. (2nd) 806 (N.Y., Apr., 1947).

ards of free expression are still in a state of flux. Two courts held that regulations of police departments forbidding patrolmen to join labor unions were not an unreasonable limit on civil rights.[179] The same result was reached with respect to an order forbidding such officers to join fraternal orders.[180] The same trend is observed with respect to attacks on the constitutionality of injunctions in labor disputes, a result probably reflecting the Lewis case.[181] While there is nothing unusual in the two cases upholding injunctions against picketing involving force and violence,[182] courts in both Illinois and Massachusetts held that peaceful picketing directed against self-employers was not protected by freedom of speech and assembly.[183] Further, the North Carolina court held that legislation prohibiting the "closed shop" . . . "protects the rights of workmen to organize; it further protects rights of workmen to express their individual opinions by refusing to join unions."[184]

The Mississippi court reversed a conviction of a journalist for contempt of court, saying that " . . . ordinarily the court has no right generally to deny to the press opportunity to learn and the right to publish the legitimate facts of trials during the public progress thereof."[185] The judge had instructed witnesses not to talk to outsiders, but not in the presence of the defendant who later questioned them.

2. *Freedom of Religion.* Decisions upholding religious instruction of public school pupils during school hours on a voluntary basis continue to accumulate in opposition to the new federal rule.[186] The California court approved the "released time plan" of the Los Angeles board of education for courses in religion given under the supervision of school authorities, but with the course content determined by a private inter-faith committee.[187] Yet religious freedom does not require that tax-paid transportation be furnished to and from parochial schools in Pennsylvania.[188]

[179] Perez v. Bd. of Comm., 178 P. (2nd) 537 (Cal. App., Mar., 1947); King v. Priest, 206 S.W. (2nd) 547 (Mo., Nov., 1947). In City of Springfield v. Close, 206 S.W. (2nd) 539 (Mo., Nov., 1947), it was held that a statute prohibiting municipal government employees from joining unions did not violate the general constitutional guarantee of a right of collective bargaining.

[180] Goodwin v. Okla. City, 182 P. (2nd) 762 (Okla., June, 1947).

[181] U. S. v. United Mine Workers, 330 U.S. 258; 67 S.C. 677 (1947).

[182] Local Union, etc., v. Jiannas, 200 S.W. (2nd) 763 (Ark., Mar., 1947); Local Union, etc., v. Fortner, 42 S.E. (2nd) 734 (Ga., May, 1947).

[183] Kinoffria v. Int. Bro. of Team., 72 N.E. (2nd) 635 (Ill., App., Mar., 1947); Saveall v. Deners, 76 N.E. (2nd) 12 (Mass., Dec., 1947).

[184] State v. Whitaker, 45 S.E. (2nd) 860, 872 (N.C., Dec., 1947).

[185] Grannon v. State, 29 So. (2nd) 916 (Miss., Apr., 1947).

[186] People *ex rel.* McCollum v. Bd. of Ed., 333 U.S. 203; 68 S.C. 461 (1948).

[187] Gordon v. Bd. of Ed. 178 P. (2nd) 488 (Cal. App., Mar., 1947), following cases described in Sherwood, *op cit.*, pp. 724–725.

[188] Connell v. Bd. of Dir., 52 A. (2nd) 645 (Pa., May, 1947). Cf. Everson v. Bd. of Ed., 330 U.S. 67 S.C. 504 (1947).

Property tax exemptions given church property are construed with a reasonable degree of latitude. Personal property, such as religious pamphlets stored in the church, is subject to tax.[189] Similar legitimate regulation was held to include the application to distributors of religious literature of a prohibition against child labor.[190]

3. *Equal Protection of the Laws.* The number of statutes challenged as providing an improper method of classification of persons is substantially larger this year, although such attacks continue to be unsuccessful in the vast majority of cases. Regulatory legislation thus challenged but upheld includes a law regulating the practice of optometry;[191] an act licensing barbers without examination or apprenticeship applicable only to veterans with three years barbering experience in the armed forces;[192] an act declaring certain bodies of water to be salt water and forbidding the catching of fish therein with other than handcast nets;[193] two statutes granting domestic insurance corporations enlarged powers of investment, and extending those powers to foreign insurance companies authorized to do business in the state;[194] an act providing for the dissolution of a named municipality;[195] a statute establishing a board the members of which are to be appointed by the governor from lists submitted by named private organizations;[196] and a statute authorizing county court judges to appoint members of election registration boards from the members of the two largest political parties.[197] Among the more noteworthy statutes approved in this respect were laws paying bonuses to World War II veterans, and a bond issue to defray the cost of a veteran housing program;[198] an excise tax levied on the privilege of selling butter substitutes at retail;[199] and a North Carolina statute prohibiting the "closed shop."[200] Special statutory provisions upheld include an act permitting cancellation of unemployment insurance premiums due monthly if they amount to less than $300 for a three-year period and if the employer makes a single payment of the

[189] Watchtower Bible & Tract Soc. Inc. v. Los Angeles Co., 182 P. (2nd) 178 (Cal., June, 1947).

[190] People v. Ciocarlan, 26 N.W. (2nd) 904 (Mich., Apr., 1947).

[191] Duren v. St. Bd., 201 S.W. (2nd) 578 (Ark., Apr., 1947).

[192] Motley v. St. Bd., 45 S.E. (2nd) 550 (N.C., Dec., 1947).

[193] Price v. City of St. Peters, 29 So. (2nd) 753 (Fla., Apr., 1947).

[194] Levis v. N.Y. Life Ins. Co., 55 A. (2nd) 801 (Pa., Nov., 1947).

[195] Caldwell v. Harris, 204 S.W. (2nd) 1019 (Tenn., Oct., 1947).

[196] Elrod v. Willis, 203 S.W. (2nd) 18 (Ky., June, 1947).

[197] State *ex rel.* Beitz v. Co. Ct., 72 N.E. (2nd) 225 (Ind., Apr., 1947).

[198] Lyman v. Adorno, 52 A. (2nd) 702 (Conn., Apr., 1947); Franco v. City of New Haven, 52 A. (2nd) 866 (Conn., Apr., 1947).

[199] Schmitt v. Nord, 27 N.W. (2nd) 910 (S.D., June, 1947).

[200] State v. Whitaker, 45 S.E. (2nd) 860 (N.C., Dec., 1947). A similar tax on motor vehicle fuel was likewise upheld in Plank v. Crines, 28 N.W. (2nd) 34 (Iowa, June, 1947).

amount due,[201] and statutes limiting the adverse effect on taxpayers of property erroneously assessed or income improperly reported.[202]

Several important cases challenged special treatment of Negroes and Japanese as discriminatory, but were upheld as not violative of equal protection guarantees. In Louisiana, it was held that the mere absence of Negroes on a jury did not invalidate a trial, since they were not excluded by statute.[203] Oklahoma likewise upheld again the "separate but equal" educational policy of that state.[204] And the California court approved a statute denying commercial fishing licenses to aliens ineligible for citizenship.[205] Four more decisions upholding restrictive convenants were handed down before the new federal rule was announced.[206]

Several statutes were invalidated as prescribing improper classifications. These included a Georgia statute requiring hotels charging more than two dollars for a room to provide outside fire escapes. The court held that the classification had no relation to the purpose of the law.[207] Similarly, a statute fixing minimum wholesale cigarette prices which failed to take account of the different operating costs of wholesalers was invalidated.[208] The same court held likewise that it was in violation of equal protection of the laws for a municipality to revoke the license of a liquor dealer by action of the council without notice or hearing, without revoking the licenses of all others similarly situated.[209] The Illinois court held that a statute requiring strip-mine operators to restore the previous contour of the land after mining was unfairly discriminatory.[210] Also a statute providing for a board to erect and maintain a public auditorium was found invalid because the board members were in part to be selected by the officers of named local service clubs.[211]

[201] General Mills v. Div. of Empl., 28 N.W. (2nd) 847 (Minn., July, 1947.)

[202] Gulf Ref. Co. v. Evatt, 74 N.E. (2nd) 351 (Ohio, July, 1947); Newman v. Dickson, 203 S.W. (2nd) 33 (Ky,. June, 1947).

[203] State v. Perkins, 31 So. (2nd) 188 (La., May., 1947). Cf. the recent U.S. decisions, Fay v. People, 332 U.S. 261; 67 S.Ct. 1613 (1947); Patton v. State, 332 U.S. 463; 68 S.C. 184 (1947).

[204] Sipuel v. Bd. of Regents, 180 P. (2nd) 135 (Okla., Apr. 1947).

[205] Torao Takahashi v. Fish & Game Comm., 185 P. (2nd) 805 (Calif., Oct., 1947). Reversed, 68 S. Ct. 1138 (1948).

[206] Hawkins v. Whayne, 179 P. (2nd) 138 (Okla., Mar., 1947); Northwest Civic Assoc. v. Sheldon, 27 N.W. (2nd) 36 (Mich., Apr., 1947); Malicke v. Milan, 30 N.W. (2nd) 440 (Mich., Jan., 1948); Mrsa v. Reynolds, 27 N.W. (2nd) 40 (Mich., Apr. 1947). These cases were all decided before Shelley v. Kraemer, U.S.; 68 S.C. 836 (1948).

[207] Geele v. State, 43 S.E. (2nd) 254 (Ga., June, 1947). This case arose out of the disastrous Atlanta hotel fire.

[208] Serrer v. Cig. Serv. Co., 76 N.E. (2nd) 91 (Ohio, Nov., 1947). See also McWhorter v. Settle, 43 S.E. (2nd) 247, 250 (Ga., May, 1947).

[209] Mayor v. Savannah Dist. Co., 43 S.E. (2nd) 704 (Ga., July, 1947).

[210] No. Illinois Coal Corp. v. Medill, 72 N.E. (2nd) 844 (Ill., Mar., 1947).

[211] Ashmore v. Gr. Greenville Sewer Dist., 44 S.E. (2nd) 88 (S.C., Aug., 1947).

Two special acts were declared invalid for the same reason. One attempted to license a named individual as a veterinarian without examination on the ground that he had performed "public service" by acting as a veterinarian.[212] The other attempted to give the widow of a state employee, killed in the course of his work, the right to sue the state for damages.[213]

4. *Police Power.* The frequency with which prohibitory and regulatory laws were challenged as being beyond the police power is somewhat greater this year than last, although relatively few challenges succeeded. Three liquor laws were upheld: one forbidding the possession of liquor,[214] one establishing a system of licensing retail distributors,[215] and one providing for county local option.[216] A statute establishing a local police department in Indiana was challenged twice unsuccessfully this year.[217] A law permitting the abolition of drainage districts and abandonment of improvements on the authority of county boards was likewise approved.[218]

Statutes declared unwarranted interference with private business include a law providing for paid time off for employees on election day,[219] a restriction limiting the sale of fire and casualty insurance to agents selling on a commission basis,[220] a statute requiring open-cut or strip-mine operators to restore the contour of their mining lands after completing their operations,[221] and a law requiring the fencing of all "excavations," to the extent that it was applicable to irrigation ditches.[222]

5. *Right to Bear Arms.* One case arose this year under this seldom used guarantee. It was held in New Mexico that the constitutional policy of permitting firearms to be kept in private homes would prevent a finding of liability of parents for a wrongful death caused by their 13-year-old

[212] Reid v. Robertson, 200 S.W. (2nd) 900 (Ky., Mar., 1947).

[213] Martin v. Sheppard, 201 S.W. (2nd) 810 (Tex., Apr., 1947).

[214] Stepp v. State, 32 So. (2nd) 447 (Miss., Nov., 1947).

[215] Graff v. Priest, 201 S.W. (2nd) 945 (Mo., Apr., 1947).

[216] Fuson v. Howard, 205 S.W. (2nd) 1018 (Ky., Nov., 1947).

[217] State *ex rel.* Manity v. Tyndall, 75 N.E. (2nd) 543 (Ind., Oct., 1947); Voelker v. Tyndall, 75 N.E. (2nd) 548 (Ind., Nov., 1947). Both cases rejected a claim by an acquitted citizen for return or destruction of fingerprints and photographs.

[218] Great Northern Ry. Co. v. Graff, 28 N.W. (2nd) 77 (S.D., May, 1947). See also Kovacs v. Cooper, 52 A. (2nd) 806 (N.Y., Apr., 1947); State v. Whitaker, 45 S.E. (2nd) 860 (N.C., Dec., 1947); and Torao Takahashi v. Fish & Game Comm., 185 P. (2nd) 805 (Cal., Oct., 1947), for other statutes, discussed in other connections above, which were upheld as legitimate exercise of police power.

[219] Ill. Cent. Ry. v. Comm., 204 S.W. (2nd) 973 (Ky., June, 1947).

[220] Dept. of Ins. v. Schoonover, 72 N.E. (2nd) 747 (Ind., May, 1947).

[221] No. Ill. Coal Corp. v. Medell, 72 N.E. (2nd) 844 (Ill., Mar., 1947). See also Serrer v. Cig. Serv. Corp. 76 N.E. (2nd) 91 (Ohio, Nov., 1947).

[222] Orr Ditch & Water Co. v. Justice Ct., 178 P. (2nd) 558 (Nev., Mar., 1947).

son in the absence of a showing that they knew the son was reckless in the use of firearms.[223]

6. *Due Process in Criminal Proceedings.* This is the largest group of cases involving some aspect of civil rights. As such, they include a wide variety of special situations, ranging all the way from the form of the criminal statute to questions involving interpretation of the guarantee against double jeopardy.

With respect to criminal statutes themselves, the New Jersey court held that an ordinance requiring the licensing of gum-vending machines and punishing violators with a fine of $24,600 or thirty years' imprisonment was unconstitutional as cruel and unusual punishment.[224] Elsewhere it was held that a statute prohibiting billboards "designed or calculated" to cause the public to believe that they related to retail motor fuel prices was sufficiently precise to inform a reasonable person of the thing prohibited, as required by due process.[225]

The guarantee of a speedy trial was held not to be violated by a delay of ten months between the return of a verdict and sentence where the delay was caused in part by defendant's failure to request a hearing on a motion to set aside the verdict.[226]

Pre-trial procedure was involved in several decisions. The validity of searches conducted without warrant but on "probable cause" was upheld in two decisions.[227] In another similar case, search without a warrant of the premises and surroundings under the defendant's immediate control was approved as incident to the arrest.[228] However, such "probable cause" must be supported by facts.[229] Federal standards of the characteristics of a valid search warrant are not accepted in Iowa.[230] An indictment returned by a grand jury must contain reasonably detailed allegations of essential facts,[231] and must specify the crime with which the defendant is being charged.[232]

Admission of the confession of the principal in a criminal act in the separate trial of the alleged accessory deprives the latter of the right to confront the witnesses against him, even though the confession was used

[223] Lopez v. Chewiwie, 186 P. (2nd) 512 (N.M., Nov., 1947).
[224] Mayor, etc. v. Bauer, 55A (2nd) 883 (N.J. City Ct., Oct., 1947).
[225] Comm. v. Slome, 75 N.E. (2nd) 517 (Mass., Nov., 1947).
[226] Howell v. Comm. 45 S.E. (2nd) 165 (Va., Nov., 1947).
[227] Thompson v. State, 203 S.W. (2nd) 361 (Tenn., June, 1947); State v. Flanagan, 29 S.W. (2nd) 771 (Wis., Nov., 1947).
[228] State v. Uielilhoff, 29 N.W. (2nd) 78 (S.D., Oct., 1947).
[229] Smallwood v. Comm., 204 S.W. (2nd) 945 (Ky., Oct., 1947).
[230] State v. Bisignano, 28 N.W. (2nd) 504 (Iowa, July, 1947).
[231] State v. Harrison, 43 S.E. (2nd) 214 (W. Va., June, 1947).
[232] Hickman v. Brady, 52 A. (2nd) 72 (Md., Mar., 1947).

to show the principal's guilt.[233] Furthermore, any private investigation of character witnesses by a court pending a ruling on a motion for a new trial is improper for the same reason.[234] This is true even though the defendant does not have the same right to appear in person and testify in his own behalf in a hearing on a motion to set aside his conviction.[235] But where the testimony was given at a preliminary hearing, it may be admitted at the trial only if the defendant had an adequate opportunity for cross-examination.[236] Such a right of self-protection does not prevent withdrawal of evidence in the defendant's absence, providing his counsel was present.[237]

Protection against self-incrimination in state courts does not prevent statutory authorization of comment on defendant's failure to testify, nor does it prevent the jury from drawing reasonable inferences from this fact.[238] The Michigan court, however, held that a witness in a state criminal action could not be compelled to give testimony which could be used against him in a federal proceeding.[239] However, a coroner's inquest is not a part of the trial; so the defendant can be compelled to testify. But such testimony cannot be admitted in the trial unless given voluntarily.[240]

A Louisiana statute providing that violation of a statute or ordinance shall be considered presumptive evidence of criminal negligence was upheld against the charge that such a rule deprives the accused of the right to defend himself.[241] Similar concern with the rules of evidence appears in several other decisions. The Illinois Habitual Criminal Act and a similar Arkansas statute applicable to liquor prosecutions were approved, subject only to the qualification that evidence of prior offenses must be supplemented by substantial evidence of guilt of the offense charged to

[233] Marjason v. State, 75 N.E. (2nd) 904 (Ind., Dec., 1947). Compare State v. Justice, 44 S.E. (2nd) 859 (W. Va., Nov., 1947).

[234] People v. Cooper, 75 N.E. (2nd) 885 (Ill., Nov., 1947).

[235] Pippin v. People, 75 N.E. (2nd) 347 (Ill., Sept., 1947).

[236] People v. Valelez, 187 P. (2nd) 74 (Cal. App., Dec., 1947). See State v. Nagel, 28 N.W. (2nd) 665 (N.D., Aug., 1947), holding that the similar federal constitutional provision was not violated by a statute making birth certificates issued by the state conclusive evidence of the facts they contain. Compare *In re* Oliver, 333 U.S. 257; 68 S.C. 499 (1948).

[237] People v. Isby, 186 P. (2nd) 405 (Cal., Nov., 1947).

[238] State v. Baker, 53 A. (2nd) 58 (Vt., May, 1947); Owens v. Comm., 43 S.E. (2nd) 895 (Va., Sept., 1947). See Adamson v. Calif., 332 U.S. 46; 67 S.C. 1672 (1947).

[239] People v. Den Uhl., 29 N.W. (2nd) 284 (Mich., Oct., 1947); People v. Hoffa 29 N.W. (2nd) 292 (Mich., Oct., 1947). See People *ex rel.* Hesley v. Ragen, 72 N.E. (2nd) 311 (Ill., Mar., 1947).

[240] State v. Burnett, 206 S.W. (2nd) 345 (Mo., Dec., 1947).

[241] State v. Nix, 31 So. (2nd) 1 (La., Apr., 1947).

support a verdict.[242] In one case, the court went so far as to approve the admission into evidence of a voluntary confession made by the defendant while under arrest but before being formally charged or informed of his constitutional rights.[243]

The extent to which an appellate court can review and weigh the evidence in a criminal case varies widely. The Maryland court insists on its lack of authority, while the California court holds that such a function is appropriate.[244]

Constitutions usually require that a jury trial be held in the district where the offense is alleged to have been committed. This, however, does not require that all members of the jury must be residents of the district.[245] Jury trial may, of course, be waived by the defendant or his counsel,[246] and in many states the legislature may provide for other than common law juries required by the federal constitution.[247]

Due process of law sometimes requires the trial court to assign counsel for a defendant when, for example, he is young, inexperienced, or illiterate, and has failed to request aid.[248] In other cases, it is held that such an obligation with respect to trials for felonies other than capital is only statutory.[249] It is not required when the defendant fails to request it if he has had sufficient experience in such matters to show that he is aware of his rights.[250] But where counsel is assigned, he must be given reasonable time to prepare a defense[251] and be allowed to communicate with the defendant before the trial opens.[252] In the latter case, if such a right is denied, objection must be entered at once and not on appeal from the verdict.

With respect to double jeopardy, where repetition of crime renders the accused subject to greater punishment, the offense will be treated as the

[242] People v. Manning, 74 N.E. (2nd) 494 (Ill., May, 1947); Richardson v. State, 204 S.W. (2nd) 477 (Ark., Sept., 1947). See also State v. Hartung, 30 N.W. (2nd) 491 (Iowa, Jan., 1948).

[243] State v. Miller, 45 S.E. (2nd) 23 (S.C., Nov., 1947).

[244] Abbot v. State, 52 A. (2nd) 489 (Md., April, 1947); People v. Malone, 185 P. (2nd) 870 (Cal. App., Oct., 1947).

[245] State *ex rel.* Cosner v. Lee, 42 S.E. (2nd) 31 (W.Va., Mar., 1947).

[246] People v. Esposti, 185 P. (2nd) 866 (Cal. App., Oct., 1947).

[247] State v. Henderson, 186 P. (2nd) 519 (Ore., Nov., 1947).

[248] *Ex parte* Cook, 183 P. (2nd) 595 (Okla. Cr. App., July, 1947); Dunfee v. Hudspeth, 178 (2nd) 1009 (Kan., Mar., 1947).

[249] State v. Hedgebeth, 45 S.E. (2nd) 563 (N.C., Dec., 1947); People v. Brown, 74 N.E. (2nd) 706 (Ill., Sept., 1947). Cf. Fay v. People, 332 U.S. 261; 67 S.C. 1613 (1947); Bute v. People, 333 U.S. 640; 68 S.C. 763 (1948). See also State v. Watson, 202 S.W. (2nd) 50 (Mo., May, 1947).

[250] State *ex rel.* Weazloff v. Burke, 27 N.W. (2nd) 475 (Wis., May, 1947).

[251] Hay v. State, 75 N.E. (2nd) 915 (Ind., Dec., 1947).

[252] Morris v. Peacock, 43 S.E. (2nd) 531 (Ga., June, 1947). See also People v. Staryak, 72 N.E. (2nd) 815 (Ill., Mar., 1947); Weinecke v. State, 52 A. (2nd) 73 (Md., Mar., 1947); *Ex parte* Smith, 187 P. (2nd) 1003 (Okla. Cr. App., Dec., 1947).

first one unless the indictment specifies the earlier crimes.[253] In general, however, double jeopardy does not prevent conviction for several crimes all arising out of the same set of facts.[254]

Protection against imprisonment for debt does not invalidate a statute punishing with a prison sentence[255] failure to pay employees' wages due. Nor does a statute providing such penalties for injuries to the public, since the obligation is not a debt.[256] Similar reasoning was used to justify a divorce decree compelling the respondent to carry life insurance.[257]

7. *Procedural Requirements in Civil Suits.* The right to be heard before one is adversely affected by governmental action is not so absolute as to prevent the state from using money held by insurance companies but unclaimed for seven years;[258] to prevent the state from authorizing a summary procedure for locating boundaries between coterminous land owners;[259] or from punishing non-compliance with administrative orders,[260] so long as resort to the courts is ultimately possible. Such suits must be brought in the county of the defendant's residence; or, where there are several defendants, in the county of residence of one of them.[261]

Notice within the meaning of due process normally requires that an interested party be informed of the nature of the proceeding as well as the time and place of hearing. Thus notice must be given to a mentally incompetent person of proceedings to appoint his guardian.[262] Where the statute provides for constructive service of notice, the procedure must be such that it is reasonably probable that it will reach the person to whom it is directed, and the notice must meet all statutory requirements to give the court jurisdiction.[263] In matters of taxation, however, the rule is less strict. Notice fixing the deadline for filing property tax returns and the date when penalties begin to run is sufficient.[264] And notice by publication

[253] State v. Leetz, 452 A. (2nd) 773 (N.J., Apr., 1947).

[254] State v. Cowman, 29 N.W. (2nd) 238 (Iowa, Oct., 1947); Hanks v. State, 76 N.E. (2nd) 702 (Ind., Jan., 1948); Dearing v. State, 204 S.W. (2nd) 985 (Tex. Cr. App., Apr., 1947); *In re* Pearson, 186 P. (2nd) 401 (Cal., Nov., 1947); Application of Caruso, 53 A. (2nd) 309 (N.J. May, 1947).

[255] *Ex parte* Trombley, 178 P. (2nd) 510 (Cal. App., Mar., 1947).

[256] State Bd. of Med. Exam. v. Kornreich, 56 A. (2nd) 490 (N.J., Jan., 1948).

[257] Speer v. Speer, 74 N.E. (2nd) 97 (Ohio, Mar., 1947). See also *Ex parte* Ward, 187 P. (2nd) 250 (Okla. Cr. App., Dec., 1947); *Ex parte* Phyle, 186 P. (2nd) 134 (Cal., Nov., 1947).

[258] Conn. Mut. Life Ins. Co. v. Moore, 74 N.E. (2nd) 24 (N.J., July, 1947).

[259] Lypolt v. Shaffer, 43 S.E. (2nd) 235 (W. Va., June, 1947).

[260] State v. Carter's Motor F. Sys. Inc., 179 P. (2nd) 496 (Wash., Apr., 1947); City of Nevada v. Welty, 203 S.W. (2nd) 459 (Mo., June, 1947).

[261] Benton Rapid Exp. Inc. v. Johnson, 43 S.E. (2nd) 667 (Ga., July, 1947).

[262] Lommason v. Wash. Trust Co., 53 A. (2nd) 175 (N.J., May, 1947).

[263] State *ex rel.* Staley v. Herford, 45 S.E. (2nd) 738 (W.Va., Dec., 1947).

[264] Grubb v. Johnson Oil Ref. Co., 179 P. (2nd) 688 (Okla., Apr. 1947).

is sufficient to protect the rights of those with liens on tax delinquent lands to be sold.[265] Admitted service of notice upon a corporation counsel removes the necessity of serving notice on the president or other head of the company.[266]

In a proceeding for damages for a wrongful death, the plaintiff may question the company defendant about their witnesses and may order the company to produce records shown to be appropriate without engaging in an unlawful search.[267] Similarly, disorderly conduct under a city ordinance is a civil proceeding which entitles the defendant to a jury trial only if the statutes so provide.[268] The same principle applies to an action to cancel an insurance policy.[269]

There is nothing improper in excluding evidence submitted by the owner of property being condemned as to its market value when such evidence is entirely unsupported by the evidence of experts.[270] Similarly, in an action for damages to realty from the construction of a viaduct, the court may exclude evidence of sums paid to neighboring owners.[271]

The Iowa statute of limitations applicable to tax deed conveyances of real property was upheld, since the time within which actions challenging such transfers of title was reasonably long.[272]

Finally, the above criminal and civil guarantees were held once again to limit action by the government only, so that failure by a labor union to provide notice and hearing before expulsion of a member is not unconstitutional.[273] Such a decision is unique, of course, only in that it got into court at all.

8. *Due Process as a Protection of Substantive Rights.* A small group of cases involved due process as a substantive protection of property rights. The community property law of Pennsylvania, passed in 1947, was declared unconstitutional on the ground that the provision making community property income and profits derived from real or personal property

[265] Reina v. Hope, 30 So. (2nd) 172 (Fla., Apr., 1947); Henry v. Mauzella, 201 S.W. (2nd) 457 (Mo., Apr., 1947).

[266] Haggerty v. Sherburne Merc. Co., 186 P. (2nd) 884 (Mont., Nov., 1947). Compare Irwin v. Willis, 43 S.E. (2nd) 691 (Ga., June, 1947).

[267] State *ex rel.* Kansas City Publ. Serv. Co. v. Cowan, 203 S.W. (2nd) 407 (Mo., June, 1947), following State *ex rel.* Fireman Corp. v. Ward, 351 Mo. 761; 173 S.W. (2nd) 920 (1943).

[268] State *ex rel.* McStroul v. Lucas, 29 N.W. (2nd) 73 (Wis., Oct., 1947).

[269] Fish v. Prud. Ins., Co. 75 N.E. (2nd) 57 (Ind., Oct., 1947).

[270] Long Beach City High Sch. Dist. v. Stewart, 185 P. (2nd) 585 (Cal., Oct., 1947).

[271] Heimann v. City of Los Angeles, 185 P. (2nd) 597 (Cal., Oct., 1947).

[272] Swanson v. Poutrola, 27 N.W. (2nd) 21 (Iowa, Apr., 1947). See also Morris v. First Nat'l Bank, 42 S.E. (2nd) 215 (Ga., Feb., 1947).

[273] State v. Le Fevre, 28 N.W. (2nd) 349 (Wis., July, 1947). Compare Madden v. Queens Co. Jockey Club., 72 N.E. (2nd) 697 (N.Y., Apr., 1947).

belonging to one of the spouses previous to the marriage violates due process of law.[274] A similar legislative effort to authorize the division of a homestead over the objections of a widow was held to violate a constitutional guarantee of indivisibility.[275]

A railroad was ordered to pay damages to property-owners neighboring the terminal for injury from smoke, soot, cinders, etc., dispersed in the neighborhood and the court declared this to be required by due process.[276]

The South Carolina court declared that a church, even if its charter had lapsed, could receive a deed, and that the title would then be vested in the members who, in turn, could sell the property.[277]

9. *Taxation.* Property taxes were the subject of several decisions, most of which present no unique aspects. Statutory exemptions from assessment of certain classes of personal and movable property were approved in Alabama.[278] In Kentucky, it was held that while the sale price of realty was not the sole criterion of value, if the property was recently sold, its price is the best evidence.[279]

A gallonage tax on liquor sold by the state was approved as a substitute for the property tax, the state having an immunity to such taxes only if specifically provided by law.[280] The same court, however, held that a city-owned rapid transit system was taxable by implication.[281]

License taxes, to be valid, must not be so high as to amount to a prohibition,[282] and must burden the same class of subjects equally. Thus a statute authorizing a single county to levy such taxes on business in incorporated areas is invalid.[283] Similarly, a gross income tax must be construed to apply to sales at wholesale prices by a company to its own employees.[284]

The only unique case in this group arose in Alabama. Under a special constitutional amendment, the proceeds of the income tax were pledged to payment of the state debt, and then to the purpose of reducing the property tax rate. This amendment on several occasions was held not to be self-executing and the legislature took no action, with the result that considerable revenue has accumulated in the state treasury. The governor asked the supreme court whether, if another amendment were added,

[274] Willcox. v. Penn. Mut. Life Ins., Co., 55 A. (2nd) 521 (Pa., Nov., 1947).
[275] Henderson v. Henderson, 204 S.W. (2nd) 911 (Ark., Oct., 1947).
[276] Devoke v. Yazoo & M. O. R. Co., 30 So. (2nd) 816 (La., Mar., 1947).
[277] Jeffrey v. Ehrhardt, 43 S.E. (2nd) 483 (S.C., July, 1947). Compare Boyle v. Pub. Adj. Const. Co., 76 N.E. (2nd) 377 (Ohio, Dec., 1947).
[278] Opinion of the Justices, 32 So. (2nd) 297 (Ala., Oct., 1947).
[279] Evans v. Allen, 205 S.W. (2nd) 514 (Ky., Oct., 1947).
[280] State *ex rel.* Williams v. Glander, 74 N.E. (2nd) 82 (Ohio, June, 1947).
[281] City of Shaker Heights v. Zangerle, 74 N.E. (2nd) 318 (Ohio, July, 1947).
[282] McGriff v. State, 204 S.W. (2nd) 885 (Ark., Oct., 1947).
[283] Fulton Co. v. Lockhart, 45 S.E. (2nd) 220 (Ga., Oct., 1947).
[284] Walgreen Co. v. Tax Div., 75 N.E. (2nd) 784 (Ind., Dec., 1947).

money accumulated and to be collected from this source could be devoted to other purposes. There is a suggestion here of a law above the constitution which protects vested rights—a suggestion evaded by the court, which held simply that the interest of property-tax payers in the fund had not become vested as yet and would not, at least until legislation implementing the first amendment was passed.[285]

10. *Eminent Domain.* This section also is relatively brief this year. The general principle is that the legislature may decide whether taking of property will accomplish the end proposed, while the courts will determine whether the purpose is a public one, whether the compensation is adequate, and whether the taking is necessary.[286] Thus most such decisions turn on such questions as what are the damages for which compensation may be sought,[287] what form can the compensation take,[288] and what title does the state acquire.[289]

11. *Retrospective Acts.* Judicial solicitude for private rights usually prevents retroactive application of statutes disadvantageous to individuals. Beyond this general principle, there is no uniformity in the reported decisions. Statutes of limitations must not go into operation in such a way as to prejudice the rights of those relying on preëxisting more favorable law;[290] yet other procedural changes may be made retroactively, such as changes to the disadvantage of the state,[291] or to the advantage of the individual.[292]

[285] Opinion of Justices, 30 So. (2nd) 254 (Ala., Apr., 1947). See also, on when rights become vested, Kern v. City of Long Beach, 179 P. (2nd) 799 (Cal., Apr., 1947); Campbell v. Oliphant, 206 S.W. (2nd) 406 (Tenn., Nov., 1947); Kilpatrick v. Selkowitz, 55 A. (2nd) 824 (N.J. Ch., Nov., 1947); Lane v. St. Louis Trust Co., 201 S.W. (2nd) 288 (Mo., Mar., 1947); McCowan v. Equitable Life Assur. Soc., 179 P. (2nd) 275 (Colo., Mar., 1947).

[286] State *ex rel.* United Fuel Co. v. De Berry, 43 S.E. (2nd) 408 (W. Va., July, 1947); Peary-Wilson Lumber Co. v. Brevard Co., 31 So. (2nd) 483 (Fla., July, 1947); Card v. City of Detroit, 29 N.W. (2nd) 146 (Mich., Oct., 1947); State *ex rel.* Hwy. Comm. v. James, 205 S.W. (2nd) 534 (Mo., Nov., 1947); Bd. of Regents v. Palmer, 204 S.W. (2nd) 291 (Mo., Sept., 1947). Such a decree is so judicial that it is reviewable only on *certiorari* or appeal. State *ex rel.* N.W. Elec. Co. v. Sup. Ct., 179 P. (2nd) 510 (Wash., Apr., 1947); City of Hutchinson v. Wagoner, 186 P. (2nd) 243 (Kan., Nov., 1947).

[287] See Heimann v. City of Los Angeles, 185 P. (2nd) 597 (Cal., Oct., 1947); Naconia Pk. Tel. Co. v. State, 180 P. (2nd) 626 (Okla., Apr, 1946).

[288] Elec. Pwr. Bd. v. Thomi, 201 S.W. (2nd) 649 (Tenn., May, 1947), held that payment is an obligation of the government which may not be avoided by pledging profits from a state-owned enterprise. See also Long Beach City Sch. Dist. v. Stewart, 185 P. (2nd) 585 (Cal., Oct., 1947); Hazel Park Assn. v. Royal Oak Twp., 27 N.W. (2nd) 249 (Mich., April, 1947).

[289] Summerill v. Hunt, 55 A. (2nd) 833 (N.J., Oct., 1947).

[290] U. S. Rubber Co. v. McManus, 45 S.E. (2nd) 702 (S. C., Nov., 1947).

[291] Cal. Empl. Stab. Comm. v. Payne, 187 P. (2nd) 702 (Cal., Dec., 1947).

[292] Gulf Ref. Co. v. Evatt, 74 N.E. (2nd) 351 (Ohio, July, 1947).

FOREIGN GOVERNMENT AND POLITICS

SOME COMPARATIVE EXPERIENCE IN ADJUSTING LOCAL UNITS AND AREAS*

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The problem of adjusting the units and areas of local government to meet changing conditions seems to be a universal one. It involves not only the question of procedure, but also the quest of the ideal. With the exception of school districts, extensive experimentation has not been forthcoming in the United States; other English-speaking countries have been far more concerned with local units and areas.

The present paper deals with the experiences of four central governments—England and Wales, New Zealand, Alberta, and Saskatchewan. None of them has found the ideal system. All have evolved various successful techniques to adjust local units and areas from time to time.

I

Widespread interest in reorganizing the areas and units of local government in England and Wales has been evident since before 1944. During the period 1943 to 1945, numerous individuals and groups came forward with plans for reform, among them the Labor party, the Liberal party, the Liberal National Committee, the National Association of Local Government Officers, the Association of Municipal Corporations, the County Councils Association, and the Urban and Rural Districts Associations.[1] Proposals by the two Liberal groups, the counties, and the urban and rural districts involved only minor variations from the existing local government structure. As a result, most interest was focused upon the NALGO and AMC reports calling for varying plans of single all-purpose authorities and on Labor's proposal for a two-tier structure.[1]

For the most part, the plans put forth by the local authority associations

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[1] For more complete discussions of some of these plans, see J. H. Warren, "The Structure of Local Government and Recent Proposals for Its Reform," *Public Administration* (London), Vol. 22, pp. 3–11 (1944), discussing the NALGO, AMC, and Labor party proposals; and Liberal National Committee, "Future of Local Government," *Municipal Journal*, Vol. 52, pp. 779–780 (1944).

were defenses of the particular level of local government they represented. Thus the County Councils Association called for greater powers for the counties and possible elimination of those counties of less than 100,000 population; the Urban and Rural Districts Associations defended district units as essential and cited the need for the maintenance of their powers; and the AMC called for single all-purpose authorities much like the existing county boroughs.

The Labor party called for a two-tier structure with the major or regional authorities (about 40 in number) controlling and administering the majority of services not administered centrally, and the minor or area authorities (about 150 in number, with an average population of 250,000 to 300,000) performing purely local services or those delegated to them by the region. It is very possible that the Labor party plan holds the key to future reorganization of local government in England and Wales, at least if the party continues to hold power. Thus in the latter half of 1946 the parliamentary secretary to the Minister of Health stated that it was the Labor government's task to create new machinery for local units. It would consist of a two-tier structure, much like that envisaged by the earlier party report. When asked if he agreed with the statement, Minister of Health Aneurin Bevan replied that he did not disagree with it, but added that the time was not ripe for a major reform of local government.[2] More recently, several individuals have been calling for a royal commission to investigate the reform of local government; but the government evidently feels that such action must wait.[3]

The publication of many unofficial plans for local reorganization gave impetus to the movement for official action by the Coalition Government. At the same time, localities were criticizing the government for attacking the problem of postwar position of local government piecemeal, function by function.[4] After much consultation with local authority associations and others, the government issued a White Paper, "Local Government in England and Wales During the Period of Reconstruction," toward the end of 1944.[5]

The central proposal of the White Paper was for the establishment of a local-government boundary commission which would have the power to adjust where necessary the boundaries and status of all localities except in the London and, in part, Middlesex areas. Two safeguards designed to limit the commission's complete freedom were suggested. The Minister of

[2] As reported in *Municipal Journal*, Vol. 54, p. 2145 (1946).

[3] For example, see *Local Government Journal*, Vol. 76, pp. 30 and 51 (1947).

[4] Edward W. Weidner, "Trends in English Local Government, 1944," in this REVIEW, Vol. 39, p. 348 (1945).

[5] A summary of the White Paper may be found in *Local Government Journal*, Vol. 74, pp. 43–46 (1945).

Health would give the commission Parliament-approved general directions for guidance on broad issues, and the more important decisions of the body would be submitted to the minister as draft orders and would be subject to review by Parliament. The procedures of county reviews and county borough extension bills would be abolished. The former gave a county council power to review the boundaries of units of government within the county and alter them if it saw fit, while the latter permitted a county borough to promote in Parliament a bill extending its boundaries.

Perhaps just as significant as that which was proposed was that which was omitted. Neither regional authorities nor universal all-purpose units were favored. The White Paper proposed no immediate or complete overhauling of the units and areas of local government. It represented a desire merely to continue trends already in evidence. Larger and fewer district units were created under the procedure of 1929 and 1933 legislation providing for county reviews—a net decrease of 157 urban and 169 rural districts being accomplished by 1944. In cases where the boundary commission's redrawing of boundaries would not result in units of sufficient size for a particular service, the centralization of a particular function or the use of joint boards might be resorted to, according to the White Paper. Transfer of several functions to the central government had already been effected in recent years; and joint boards were in common use, as evidenced by the fact that 934 out of the 1,396 local planning authorities in 1944 carried out their responsibilities through 167 joint executive committees. The parliamentary debate on the White Paper was favorable, commendation especially being directed to the boundary commission proposal and the suggestion that the existing county and county borough framework be retained.

In the closing days of Parliament in the middle of 1945, the Local Government (Boundary Commission) Act was passed, implementing the proposals of the White Paper. There were those who suggested during the debate that the bill's provisions did not go far enough. General approval, however, was forthcoming. The contemplated procedure was that a commission of five would be appointed by the minister. The members of the body were to have a broad, judicial outlook and not represent particular local-government interests. They were to make a study of changes desirable in the units and areas of local government in England and Wales. Any affected local unit could request a public local inquiry. No alteration of area or status would involve the loss by any borough of its charter. General directions by the minister to the commission and parliamentary review of county or county borough alterations were to be required. Once a change in units or areas was made, no further change in the locality could be made for ten years.

The change of governments did not disturb the implementation of the

plan. Shortly after the Labor government came to power, the new Minister of Health appointed a very capable commission. Without delay, he laid before Parliament the proposed general regulations to guide the boundary commission in its work. The former minister publicly supported the proposals, and almost no disagreement over them was expressed. They specified that the governing principle in any alteration of status or boundaries was to ensure, collectively and individually, effective and convenient units of local-government administration. The factors to be taken into consideration were to include the wishes of the inhabitants; population, size, and shape of areas; financial resources; administrative record of the authorities; physical features, including suitable boundaries, means of communication, and accessibility to administrative centers and centers of business and social life; economic and industrial characteristics; anticipated development; and community of interest. Priority was to be given to boundary alteration cases of county boroughs suffering from war damage and desiring to expand beyond their areas for reconstruction purposes, and to all county and county borough matters generally.

Early in 1946 the commission began its work, and enough time has now expired to permit some review of its procedure and accomplishments. An "initiating notice" of a proposed investigation is issued to all localities concerned and to the minister after which an investigator is sent to the area to collect information and testimony. The investigator is to make no recommendations, but merely to collect data and transmit them to the commission. The latter body then issues an "outline order" containing its proposal for reorganization. Any locality may object and demand a further local inquiry. A "final order" is then issued.

In April, 1946, the commission addressed a letter to all counties and county boroughs, asking if they planned to make any boundary proposals. Eighty of 83 county boroughs and 37 of 61 county councils replied in the affirmative, and in addition 44 authorities have proposed the creation of 33 new county boroughs. The staggering task thus placed before the commission is being handled by dividing the proposals into two groups, those requiring immediate action and those of a less urgent character. Virtually no consideration has yet been given to individual county district problems.

Between May and December, 1946, some 191 conferences with local authorities were held. The technique of informal meetings and conferences with localities at the investigation stage was developed and has worked well. The boundaries of county boroughs occupied most of the commission's time during the first year. The proposals relative to these units may be grouped into three categories: (1) limited extension of county borough boundaries, in accord with past policy; (2) large extensions of county boroughs, resulting in some areas in the creation of a solid block of county boroughs (and an all-purpose authority); (3) the creation

of new county areas in urban sections within which all existing county boroughs would relinquish their county borough status, but retain a subordinate status (a two-tier system). The decisions taken up to the time of writing are confined to the first category. In numerous cases, boundaries have been extended. The commission also has announced that certain county boundaries must be changed, but definite decisions have not yet been made.

The boundary commission in its first annual report asked Parliament to abolish any distinction between the legislative and administrative powers of rural and urban districts and non-county boroughs and to abolish the names of the two types of districts (urban and rural) in favor of one name—county district.

In summary, it appears that a year or two hence the number of units of local government in England and Wales will be greatly reduced and the areas enlarged both in rural and urban sections.

II

The problem of units and areas of local government in New Zealand has been recognized by the central government for over ten years. As early as 1937, there was presented to Parliament a Local Government (Amalgamations Scheme) Bill. The situation is made acute because of the many *ad hoc* local units, the multiplicity of authorities in metropolitan areas, and the inadequate areas of some rural localities.

The most recent attempt to find a solution began in 1944, when Parliament established a select committee "to inquire into and report upon all phases of the local government system of the Dominion," including "the general structure of the system." Appointed to the group were eight members from the government side and six from the opposition. The committee members had much experience in local government, being former chairmen of county councils, mayors, borough councilmen, or members of rabbit, harbor, electric power, or hospital boards.

No sooner had the committee been established than various local-government groups demanded it be abolished. Thus the New Zealand Counties Association informed the government that it had no confidence in the body and asked for "an independent commission which will make the investigation in a manner far removed from party politics." At the 1944 municipal conference of mayors, councillors, and town clerks, a resolution was passed recommending that the select committee be abolished and a royal commission established in its place. Despite such adverse criticism, the government stood its ground.

The committee held numerous hearings throughout the Dominion, received extensive briefs from interested groups, and carried out its own research under the capable direction of F.B. Stephens. In October, 1945,

the Local Government Committee made its report;[6] it was debated in August, 1946; and in October the Local Government Commission Act was passed, incorporating the principal recommendations of the committee relative to units and areas. Throughout this entire period, there was nearly unanimous opposition to consolidation by those units that feared they would lose their identity—small rural localities, *ad hoc* units, and suburban areas. The committee report and the parliamentary debates on the report and the Local Government Commission Act were marked by a lack of partisan cleavage, and even the bitterest critics of the appointment of a parliamentary select committee admitted that the results were better than they had expected.

Previous to the new act, consolidation or alteration of boundaries was effected, if at all, by local action. A certain percentage of electors could petition their local council to hold a referendum to determine whether the majority favored a particular plan of consolidation. If the vote were favorable, the central government could take steps to effect the merger. This procedure is similar in essence to that specified by most states in this country. And as a matter of fact, quite a few consolidations and alterations of boundaries took place in urban areas under these provisions. However, the Local Government Committee found that a number of other urban districts should have taken action; and practically no action had been taken by counties. *Ad hoc* districts needed reorganization, too. "The existing legislation merely makes provision for local reorganization. We think conditions are such as to call for more than the patching up of existing inequities. The whole system needs a complete reorganization and this cannot be carried out under existing legislation."[7] The need, in short, was for more central control and guidance over local areas and types of units.

The committee summarized its recommendations as follows:

A. Amalgamations. In the districts of many territorial local authorities, the area does not correspond with the community of interest. As a consequence, in some districts, as in Auckland and Christchurch, there are several territorial local authorities administering an area which could be administered by a single responsible body. In some cases, urbanized areas of counties adjacent to boroughs should be included in the borough. In some cases, smaller counties could with advantage be amalgamated among themselves or absorbed by larger counties.

B. Hospital Boards: Amalgamations. There are too many hospital boards in New

[6] The *Report* of the Local Government Committee (Wellington, Government Printer, 1945, 189 pp.) not only outlines the committee's recommendations, but also presents in some detail a description of the historical background and present structure of local government in New Zealand. The contents of the report, as well as developments leading to the passage of the act, have been summarized in various biweekly issues of *Board and Council* (New Zealand) since 1944.

[7] Local Government Committee, *Report*, p. 150.

Zealand at the present time. We recommend that steps be taken at a very early date to reduce considerably the number of hospital boards. . . .

C. Electric Power Boards: Amalgamations. Some electric power districts are too small to operate as efficient units, and should be amalgamated with larger boards.

D. Electricity Undertakings of Boroughs. In some cases, small territorial local authorities are operating electric power distribution. These could be more effectively administered by a larger power board to include these urban areas.

E. Rabbit Boards. While there may be a case for the retention of some of the larger rabbit boards, we think that in general the problem of rabbit destruction should be the responsibility of the county councils. . . .

F. Drainage and River Boards. While there may be a case for the retention of large drainage and river boards the territories of which extend beyond the territory of one county, yet in general we think that land drainage and river protection should be made the responsibility of the county councils. . . .

G. Harbour Boards. There is a pressing need for a thorough overhaul of the whole position of the harbour facilities of the Dominion, particularly as to the smaller ports. There is some evidence that there should be some readjustment of the boundaries of harbour districts. . . .

J. We therefore recommend that a *permanent Local Government Commission* be set up, which shall consist of three salaried members, the chairman to have the status of a judge of the supreme court; one member to be appointed by the Government because of his knowledge of local government, and the third member to be appointed from a list of nominees submitted by the various national associations of local bodies. The commission should have the responsibility of carrying out a survey of the problem of area and function of all local authorities in the Dominion, and of drawing up schemes for reorganization. The commission should not only deal with amalgamation of like bodies, but also with the absorption of internal bodies, such as rabbit, drainage, and fire boards, by the territorial local authority, and, generally, with the area and functions of local bodies in the Dominion.

We recommend that when such a commission is set up the problems of Auckland, Christchurch, and of hospital boards should be among the first to be dealt with.

The commission is to be responsible to Parliament. Its reports are to lie on the table of the House for thirty days, and if not objected to, to become law. If objected to by a local body through its members of Parliament, the specific questions under discussion should be submitted to a committee of the house, which would have the right, if necessary, to amend the report in any particular. Once the report is adopted by the house, it should become law.

. . . It is not considered that statutory action will be necessary in every case of reorganization if adequate powers are given to the commission.

We do not consider that a poll of ratepayers should be required subsequent to the findings of the commission.[8]

The committee's proposal that a commission be established was reached without any knowledge that a somewhat similar plan was being implemented in England and Wales. That such was the case was soon discovered, and this fact helped to strengthen the committee's hand.

In the parliamentary debate on the report, there was general agreement that some problem of units and areas existed and that the principle of a local-government commission was sound. Two points were especially criticized—the proposal that there be no local referendum on a plan of

[8] *Ibid.*, pp. 179–180.

reorganization and that a committee of the house be an appeal body which might have to hear over again all the evidence presented to the commission. Local authorities agreed with these observations and added another —local government should have more representation on the commission.

As presented to Parliament, the Local Government Commission Bill embodied the committee's recommendations as to the creation and scope of powers of the commission. The commission was "to review from time to time the functions and districts of local authorities and to inquire into proposals and prepare schemes for reorganization thereof," such schemes might cover all types of boundary alteration and consolidation or abolition of units. The commission could act on its own motion or at the request of a locality or the minister. It was to give one month's notice of an investigation and upon completion of the inquiry was to draw up a proposal. Interested and affected parties were to be given one month to register their objections or comments with the commission concerning its proposed scheme, and then the commission could take its final action.

The bill deviated in two respects from the recommendations of the committee. A referendum could be taken on the commission's proposals if they involved the union, abolition, or merger of any county, borough, or town district. The commission itself could order a poll, or fifteen per cent (this was later changed to twenty per cent) of the electors of any unit affected could petition for a referendum within a month. A majority of those voting on the issue was required to give effect to the commission's decision.

The original bill provided that if the commission was considering matters of concern to a type of local-government unit that was not represented on the body, the appropriate local-government association would have the right to nominate a representative to sit with the commission and give it advice. This clause was dropped, however, and the number of members of the commission was increased to four—one to have the status of a judge, one to be appointed by the government for his knowledge of local government, and two to be elected from a list of nominees from the various local-government associations (one rural and one urban representative).

In this form, the bill was enacted into law. The associations that have been designated as nominating groups for two of the four commission members are the Municipal Counties, Electric Power Boards, Harbour Boards, and Hospital Boards Associations. In the spring of 1947, the commission was formally appointed.

III

Twelve years of interest and progress in adjusting units and areas to the needs of the time have resulted in a rational system of general local units of government and school districts in Alberta. The province has a one-tier

system of general-purpose localities with three types of urban units—cities, towns, and villages—and two types of rural units—rural municipalities and improvement districts. Improvement districts are not units of self-government, however, and are to be found in the sparsely settled areas of the province. The principal unit of rural local government, the municipality, was originally designed to cover 72 square miles, and the stipulated area was progressively increased to 216 square miles in 1907 and 324 in 1912. During the next thirty years, very few changes occurred in the areas of these localities.

The impact of the depression of the 1930's brought the problem of units and areas to the fore in Alberta. It was in 1931 that the annual convention of the Association of Municipal Districts passed a resolution favoring the establishment of a county system. During the next year, the government worked with the association in preparing a tentative plan, but a majority of the delegates present at the following convention did not support the proposal. After the establishment of the first enlarged school districts in 1937, the provincial Department of Municipal Affairs again studied the adequacy of the existing units of local government. The results were amendments to the Municipal District Act in 1938 and 1941 permitting the Minister of Municipal Affairs by order to direct "that any or any part or parts of any municipal districts or improvement districts shall be merged into one municipal district . . . and thereupon the then existing councils of each . . . shall be dissolved and . . . the new district shall . . . be administered by one council consisting of such number of persons elected or appointed in such manner as the Minister may prescribe."[9] The minister's decision is final on all matters concerning the merger, including even the apportionment of property, rights, and liabilities. Previous to these amendments, no provisions for consolidation of municipal districts existed, although the minister was authorized to create rural municipalities and to alter their boundaries and the cabinet could abolish a unit.

The Department of Municipal Affairs proceeded to launch an educational campaign designed to acquaint local citizens and officials with the objectives of the program and to secure their support if possible. Pamphlets, hearings, speeches, and research were used. By the early part of 1947, the 143 rural municipalities had been reduced to 57, and the department still anticipated setting up more enlarged districts in the next year or two (see Table I). Most of the enlarged districts included from 36 to 45 townships, as compared with a previous average of nine for the smaller units.

The Department of Municipal Affairs "is satisfied that the establish-

[9] *Alberta Revised Statutes, 1942*, Municipal District Act, Part 3, Sec. 17a(1).

ment of enlarged municipal districts has had a beneficial effect with respect to local government in each instance wherein the larger district has been created."[10] The improvement is very noticeable in the quality of local office management, especially in accounting, statistical, and recording activities. Highway and road construction has been bettered, since the larger units can afford to purchase better equipment and can use it longer each year than smaller units. Lower administrative costs or tax rates have not been forthcoming. After the initial cost of installing new equipment

TABLE I

NUMBER OF RURAL MUNICIPAL DISTRICTS IN ALBERTA, BY SELECTED YEARS

Type of District	*Year*		
	1941	*1944*	*1947*
Total	143	60	57
Small	143	20	15
Enlarged	—	40	42

Sources: *Annual Report*, Alberta Department of Municipal Affairs, 1941 and 1944; department letter to author, Apr. 10, 1947.

and procedures has been met, these may be attained. The picture is further complicated by the fact that administrative costs have risen in all types of units during the last five years. The most that can be said in regard to costs is that no definite conclusions can yet be drawn. It is significant that the general public and local officials seem agreed that the larger units are a success.

The depression of the thirties underlined the inadequacy of small school districts also. As early as 1934, a select committee of Parliament investigated school finances. Effective action was not forthcoming until 1936 after a change in governments. A school division amendment to the school act was passed providing: "Where the conditions prevailing are such that it appears advisable in the interests of education so to do, or if it is so requested by the boards of trustees of the majority of school districts in a proposed division, the Minister [of Education] may by order constitute a school division consisting of any number of rural public school districts not being districts wholly or partially in a consolidated district."[11] The Minister of Education was also given power to include in or transfer or exclude from divisions any public school districts. A school division board

[10] Department letter to author, Apr. 10, 1947.

[11] *Alberta Revised Statutes, 1942*, School Act, Ch. 175, Sec. 251(1).

can enter into agreement with the board of any town, village, consolidated or separate school district for inclusion in the division. A vote on such inclusion may be demanded upon petition of twenty-five per cent of the voters.

Previous to the new law, minor school-boundary changes were effected by ministerial order and abolition of districts by cabinet decision. Consolidation was possible by local vote and ministry approval or to a limited extent only by ministerial order under certain circumstances. Complete consolidation differs from the new division procedure not only in the latter's not permitting local referenda, but also in the fact that districts within a division are not abolished. Both division and district boards are elected, but the latter have merely advisory rôles to play except with respect to certain matters concerning school property. Local education policy in all respects is determined by the division board.

Without delay, the Department of Education began an investigation of rural school districts, resulting in the first nine divisions being established in January, 1937. Ten years later, school divisions covered nearly all rural populated territory and considerable urban area. Non-rural school districts are still seeking inclusion in divisions. As indicated in Table II,

TABLE II

NUMBER OF SCHOOL DISTRICTS IN ALBERTA, 1934 AND 1947

Type of District	*Year*	
	1934	*1947*
Total	3,502	214
Rural	3,219	27*
Separate	18	21
Village	127	48
Consolidated	63	25
Rural High	16	—
Towns and Cities	59	37
Divisions	—	56

* 27 not included in divisions; 4,785 are so included.
Source: Alberta Department of Education, letter to author, May 12, 1947.

the number of policy-deciding school units has been reduced from 3,502 to 214 in just over a decade. About the only rural school district areas not included in divisions now are those that are isolated, e.g., those in national parks, mining camps, and settlements along the rivers in the extreme northern part of the province.

The department claims that three principal beneficial results have been

attained. (1) Selection, placing, and prompt payment of teachers have been made by divisional boards instead of by trustees of small rural school districts. (2) Taxation rates have been levelled within each division. (3) Extensive conveyance and centralization plans have been adopted so that in general very young pupils attend a local school or are conveyed a short distance, obtaining graded school facilities. Older pupils are conveyed to central schools having several teachers, better qualified, and more highly specialized.[12]

Ideal developments were hampered by war-created phenomena such as teacher shortages; but most divisions have made good progress in providing transportation or dormitories (the latter for high school students living at a great distance), departmentalizing, reducing the number of small one- and two-room high schools, creating more flexible high school curricula, and even hiring travelling specialists in music, primary supervision, or home economics. Public opinion is strongly in favor of the new system despite the fact that school tax rates have been increased in areas of large and highly assessed grain farms with sparse population and very few children. There has been some seasonal difficulty in operating school buses and some loss of autonomy by very small districts, but neither of these factors has aroused opposition to the division plan.

Alberta's neighbor to the East, Saskatchewan, has taken effective action relative to its school districts also. In 1940, Parliament passed legislation enabling school district residents to petition for an election on the question of establishing a school division. It was soon evident that stronger legislation was required permitting some central initiative. In 1944, the Larger School Units Act was passed permitting the minister to create larger units, equivalent in most respects to Alberta's school divisions, the component districts still maintaining their identity with advisory powers and some jurisdiction over the physical plant of the school. Three chief differences are to be found between the Alberta and Saskatchewan plans. The latter specifies that the enlarged units shall consist "in each case of such number of rural or rural and village public school districts as employ approximately eighty teachers."[13] Since most of these school units employ but one teacher, the result is that almost all enlarged units in Saskatchewan are of approximately 80 school districts. A second difference is that in the latter's act it is provided that either the minister through the cabinet or 20 per cent of the voters by a petition can require a referendum to be taken in the proposed unit on the question of its establishment. A majority of those voting on the issue in the entire

[12] Department letter to author, May 12, 1947. For an account of the experiences of one division since its establishment, see *Ten Years of the Foremost School Division No. 3* (Foremost, Alberta, 1947), pp. 1–19.

[13] Larger School Units Act, Sec. 3(1).

proposed unit is required. Thirdly, the enlarged unit school board is not directly elected by the voters as in Alberta. Instead, the individual school district trustees send delegates to a subdistrict meeting of the enlarged unit which nominates or elects the subdistrict's member for the enlarged school board.

The Provincial Department of Education has conducted a widespread campaign to acquaint citizens with the advantages of enlarged units. The campaign has borne fruit, since previously some 5,000 local school districts averaging 20 square miles in area existed, whereas now over 3,500 of them have been grouped into 45 operating enlarged units. Fifteen other units have been proposed by the department. The advantages claimed for the enlarged units are essentially the same as those for the divisions in Alberta. In 1946, it was found that many improved special services had been effected—health programs, high school facilities, teacher aids, libraries, and building programs. Important savings were reported through the purchase of supplies in bulk. Of 42 units in 1942, 26 considered their relations with district boards as cordial, 16 from unsatisfactory to good. The attitude of ratepayers was becoming more favorable to the enlarged units in 26 cases, while 16 reported that insufficient time had elapsed for such an estimate to be made.

Within a few months, it is possible that Saskatchewan may accomplish much in the way of reorganizing its general-purpose rural units of government. As in Alberta, general-purpose units are the cities, towns, and villages in urban areas and the rural municipality in rural areas (plus improvement districts in non-self-governing sections). In 1944, a committee was appointed to study the reorganization of rural government. Its chairman was a professor at the University of Saskatchewan, and it included two municipal officials, the secretary of the United Farmers of Canada (Saskatchewan section), and an official of the soils department of the University. Together with three technical advisers, the committee has held open hearings, received briefs from interested parties, including the Association of Rural Municipalities, and conducted research, including an inquiry into Alberta's experience with enlarged rural municipalities. At the present time, there is a cumbersome procedure for merging rural localities that requires local approval by the voters of each existing municipality. The Minister of Municipal Affairs may by order alter boundaries of these units, and the cabinet may abolish them. This time-consuming process and its attendant publicity have brought the problem of rural municipal reorganization to the minds of officials and citizens. Rural local officials in general have taken stands opposing general reorganization of the areas of their units. Local readjustment may be necessary, but no further action should be taken unless definite proof is available that it will help maintain and strengthen local government—a result

which the local officials doubt would be attained. The government is now awaiting the committee's report, and it is probable that some action will be taken to implement recommendations made.

IV

The experiences of England and Wales, New Zealand, Alberta, and Saskatchewan in adjusting the units and areas of local government do not contribute materially to a solution of the problem of finding the ideal system. It was their very inability or reluctance to find such an ideal that forced the first two central governments to establish commissions with jurisdiction over the problem. It is true that in all of these instances the tendency is toward larger units of local government, both in urban and in rural areas, and we may conclude that the ideal is in the direction of larger units. But answers to such fundamental questions as a one-tier versus a two-tier system, the proper rôle of *ad hoc* units, and the ideal size of general-purpose units under present conditions have not been reached. Many political scientists have considered it an axiom that a one-tier system of local units is best. There is no clear tendency in this direction in these jurisdictions. As a matter of fact, several "federalist," or two-tier, arrangements have been established or proposed, as exemplified by the school divisions in Alberta, the enlarged school units of Saskatchewan, and at least one proposal in an urban area in England.

The inability to find an ideal solution may be due to the fact that there is no one panacea. It is certainly true that the experiences of these central governments prove that one sweeping reform of local units and areas is not the answer. A continuous alteration of boundaries is necessary as conditions change. In the case of all four of the jurisdictions examined, one or more extensive adjustments of local units and areas were made in quite recent years before the present attempt. Yet the lack of an adequate procedure for currently adjusting local units helped to force action by all four of the central governments during the last few years.

Certain procedures have not been successful. The granting of powers to counties to change boundaries within their areas proved inadequate in England and Wales. Parliamentary action on most specific cases of boundary or unit alteration was abandoned in England and Wales, as was cabinet decision in certain instances in Alberta and Saskatchewan. Modern parliaments and cabinets are too preoccupied with matters of larger concern to give proper attention to these matters; they also function better in considering more general issues. Local initiative in proposing boundary changes did not result in sufficient action in New Zealand. Not only the lack of sufficient action by particular localities, but also the possibility of inadvisable action emphasizes the need for central supervision and control over any changes made.

The search for new techniques to bring about alterations has been particularly vigorous during three recent periods. The exigencies of the depression turned officials' minds to unit and area revisions as a possible method of saving money. War-bred shortages, such as that in teacher and other personnel, brought unit and area action designed to remedy the situation in part. Postwar problems have resulted in the creation of new functions and the extension of others. The consequent adjustment of functions and finances has inevitably affected local governments. Larger areas are better able to support many services.

All of the four central governments are organized on a parliamentary basis. Perhaps this in itself is an advantageous "technique" that is not available to any of the forty-eight states. The more thorough organization and discipline of parties cannot be the sole reason for accomplishment. In no instance was the reorganization of local units and areas an issue of party conflict. Yet perhaps such organization explains the ability of the parties to withstand pressure from local authorities opposing any change. While in no instance were local officials the most vigorous exponents of reform, they frequently did not go to extreme lengths in opposing it. And after experience with the new systems, they and the general public seem to be quite satisfied. The parliamentary system probably facilitates policy leadership more than the system in vogue in American states. This is particularly true with the existence of cabinet posts that deal principally with local government. Such a department does not exist generally in this country.

The more specific methods used for a continuous reëxamination of local units and areas by the four central governments are two. Ministerial orders have been utilized in Alberta and Saskatchewan. Both England and Wales and New Zealand specifically rejected this procedure. It was felt that a more expert, impartial, judicial, non-political technique was advisable. Special permanent commissions were thus established. Each method has worked well where tried. The requirement of a voter referendum to approve boundary or unit changes exists only in two of the four jurisdictions—and in these cases in a somewhat limited form. The point of the theoretical desirability of a referendum is a difficult one and involves charges of centralism versus parochialism. An unlimited right of local referendum does somewhat disregard the obvious concern of the central government in reorganization. Yet where local referenda can be held—in Saskatchewan and New Zealand—extensive educational campaigns by the central governments have resulted, or are likely to result, in overcoming most resistance to changes. Alberta and England and Wales have also conducted educational campaigns to lessen opposition to reform. In all four cases, the usual procedure is to conduct a thorough investigation before legislation is proposed and before each particular plan for re-

organization is made. Hearings and extensive research by experts are accompanied by publicity to acquaint the local communities with the need for change.

The effects of the four attempts to alter local units and areas are evident except in New Zealand, where it is too early to determine whether the new machinery will be effective. In England and Wales, it is obvious that the number of units is being reduced and areas enlarged; but the benefits, if any, flowing from these changes cannot be assessed so quickly. In Alberta (general-purpose and school units) and Saskatchewan (school units), the larger areas and fewer units primarily have brought the rendition of better and more extensive services. Tax rates have not been reduced, although there is equalization of service as between poorer and more well-to-do areas. Personnel has been better utilized and administrative practices have been improved.

These results can be attributed to the continued growth of the public service state. Local units and areas need to be revised so that more services can be performed locally at reasonable costs. Any savings from increased efficiency are more than likely to be absorbed by the expense of additional activities.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

In the minutes of the December, 1947, meeting of the Executive Council of the American Political Science Association appeared an item as follows: "Professor Ogg at this point indicated a desire to have the Council give consideration during the years 1948–49 to the problem of securing a successor for his office. The Council accordingly created an *ad hoc* committee to explore the problem of the REVIEW and the editorship. To this committee was also referred the question of the possible publication of a separate volume of *Proceedings* in one or more numbers of the REVIEW." Acting in accordance with these votes, President Henry R. Spencer has appointed a committee as follows: V. O. Key, Jr. (*chairman*), Johns Hopkins University; Paul Appleby, Syracuse University; Robert E. Cushman, Cornell University; Robert J. Harris, Louisiana State University; Peter H. Odegard, University of California; and Benjamin F. Wright, Harvard University.

Professor Leonard D. White, of the University of Chicago, has been invested with the rank of a Commander of Leopold II by the Prince Regent of Belgium.

Associate Professor Robert H. Connery, of Stanford University, has been appointed to a full professorship at the University of Illinois and will conduct courses on public administration both on the Urbana campus and at the Springfield extension center.

At Dartmouth College, Professor Donald H. Morrison has been promoted to a full professorship and also made dean of the faculty. Professor Robert K. Carr has been elected to the Joel Parker professorship of law and political science.

Professor Taylor Cole, of Duke University, left for Berlin and Frankfurt in June to assist in the Cultural Exchange Program. His official title is Visiting Expert in Educational and Cultural Matters.

Professor D. F. Fleming, of Vanderbilt University, has been granted leave of absence for 1948–49, and will spend the year at the Institute for Advanced Study in Princeton, working on some phase of the current conflict between the great powers.

Professor Clarence A. Berdahl will be on sabbatical leave from the University of Illinois during the first semester of 1948–49 and will spend at least a portion of the time working in Washington on a number of projects (including completion of a book) in the field of political parties.

Mr. M. Henry Wells, instructor at Yale University, is spending the summer in the Philippine Islands on a research project sponsored jointly by the Institute of International Studies and the Southeast Area Program of the Division of Far Eastern and Russian Studies of the University.

Professor Lane W. Lancaster, of the University of Nebraska, will teach at Yale University during the year 1948–49 as visiting Cowles professor of American government. During the recent summer session, he taught at the University of Wisconsin.

Professor Arthur M. Wilson, of Dartmouth College, is teaching at the summer session of the State University of Iowa; Professor John W. Masland, at Columbia University; and Professor Dayton D. McKean, at the University of Colorado.

Professor Mulford Q. Sibley, of the University of Illinois, is teaching during the present summer at the University of Oklahoma, and Professor Cortez A. M. Ewing, of Oklahoma, is teaching at Illinois.

Professor John T. Salter, of the University of Wisconsin, has gone to the Philippine Islands where he will teach during the coming year in the University of the Philippines.

Professor Everett S. Brown, of the University of Michigan, is spending a part of the summer working in the Library of Congress on a monograph on bibliography and methods of research in political science, designed for later publication.

During the spring quarter, Professor H. C. Nixon was on leave from Vanderbilt University while serving as graduate professor at Emory University.

Dr. David C. Scott, who recently received his doctorate at the State University of Iowa, has been appointed associate professor at the Southwest Missouri State College.

Mr. James M. Mitchell, executive director of the Civil Service Assembly of the United States and Canada, gave a course on public personnel administration during the summer quarter at the University of Chicago.

Mr. Robert E. Lane has been appointed to an instructorship at Yale University and will teach American government and public administration.

During the recent summer session, Professor Wilfred E. Binkley, of Ohio Northern University, conducted two graduate courses at Teachers College, Columbia University.

At Syracuse University, Dr. Robert Engler has been promoted to an assistant professorship of citizenship in the Maxwell Graduate School.

Professors Martin L. Faust, of the department of political science, and Robert L. Howard, of the School of Law, at the University of Missouri have been elected to a thirteen-member commission charged with writing a home rule charter for the city of Columbia.

Professors Edward H. Buehrig, of Indiana University, and Llewellyn Pfankuchen, of the University of Wisconsin, were members of the Brookings Institution seminar on problems of United States foreign policy held at Stanford University late in June.

Professor John B. Whitton, of Princeton University, will be on leave until February, 1949, and during the summer will lecture at The Hague.

Professor Ward M. Morton, of the University of Arkansas, is teaching in the current summer session at Wayne University, and Professor G. Lowell Field, of Wayne, is reaching at the University of Arkansas.

Professor John E. Briggs, of the State University of Iowa, is teaching at the University of Colorado during the current summer session.

Dr. Russell M. Rose, who recently received his doctorate at the State University of Iowa, has been appointed an assistant professor at that institution.

Mr. S. Laird Swagert, who received his doctorate at the State University of Iowa this year, has been appointed to an assistant professorship at San José State College, San José, California. He will introduce courses in administrative law and history of political thought.

Mr. Robert Presthus, who recently received his doctorate at the University of Chicago, is teaching in the summer session of Roosevelt College of Chicago.

Professor Philip H. Taylor, of Syracuse University, served as a member of the political science staff at the University of Wisconsin during the recent summer session.

At the University of Minnesota, Dr. Asher N. Christensen has been promoted to the rank of full professor and Dr. Werner Levi to that of associate professor. Professor Christensen lectured on "An Interpretation of Political Events in Argentina: 1943–1948" in the annual Institute of Latin American Affairs held at the University of Texas on May 13, 1948.

Mr. Max Beloff, reader in political institutions at Oxford University, is occupying an honorary fellowship for the summer period at the University of Minnesota.

At the University of Nevada, Mr. Claude C. Smith, who recently received his doctorate at Stanford University, has been promoted to a full professorship in the department of history and political science.

At Rhode Island State College, Dr. John O. Stitley has been promoted to the rank of assistant professor.

During the academic year 1948–49, Dr. Russell H. Ewing will serve as visiting professor of public administration and acting head of the department of political science at Hamilton College.

At DePauw University, Dr. Harry W. Voltmer has been appointed Hall professor and head of the department of political science. Dr. Clark F. Norton, of the University of Michigan, has accepted an associate professorship and will be responsible for the courses in local government and constitutional law.

Professor Winston W. Crouch, who spent the past year on sabbatical leave with the National Institute of Public Affairs in Washington, D. C., has resumed his teaching duties at the University of California (Los Angeles).

Professor Mulford Q. Sibley, of the University of Illinois, has accepted an associate professorship at the University of Minnesota.

At the University of New Mexico, Professor Miguel Jorrin has been appointed director of the School of International Affairs.

At Connecticut College, Professor Hugh A. Bone, of the University of Washington, gave courses during the first term of the recent summer session and Professor William D. Stout, of the University of Kentucky, during the second term.

Dr. J. William Robinson, of Whittier College, spent several weeks during the summer at United Nations Headquarters at Lake Success in connection with his courses in international organization.

At the University of Texas, Mr. Richard Payne and Miss Janice Christensen have been appointed to instructorships.

At the University of Illinois, Professor Clarence A. Berdahl has been succeeded as chairman of the political science department by Professor Charles M. Kneier. Professor Kneier has also been made acting director

of the Institute of Government and Public Affairs, created a year ago, and henceforth to be an adjunct of the department.

Professor John N. Hazard, of the Russian Institute of Columbia University, taught during the past summer in the Claremont Summer Session at Claremont, California, giving courses entitled "The Soviet Union and World Affairs" and "Political Institutions of the Soviet Union." Professor Thomas I. Cook, formerly of the University of Washington, was also a member of the Claremont Summer Session staff, giving courses on "The Western Tradition of Political Thought" and "Theoretical Bases of American Democracy."

Professor Charles E. Merriam, of the University of Chicago, has accepted an invitation to spend the week of March 14 to 20, 1949, in residence on the campus of Pomona College. While there, he will give three public lectures and be available for conference with students at Pomona and the Claremont Graduate School.

Dr. Richard C. Spencer, formerly governmental organization specialist in the Governments Division of the United States Bureau of the Census at Washington, has accepted a professorship at Coe College, where his duties will begin in September. During the past academic year, and also summer, Dr. Spencer was visiting professor at the University of Nebraska.

Dr. Vladas Louis Juodeika, until recently head of the political science department at St. Benedict's College, Atchison, Kansas, has been appointed associate professor at Briar Cliff College, Sioux City, Iowa. Before coming to the United States in 1946, he was OPA chief of Lithuania for five years and senior assistant professor of social economy at the State University of Lithuania.

At Rutgers University, Dr. Sidney Ratner has been promoted from assistant professor of history and political science to associate professor.

At Brown University, Dr. Guy Howard Dodge has been promoted to an associate professorship.

At the University of Pennsylvania, Dr. Philip E. Jacob has been promoted to the rank of associate professor.

During the fall term, Professor Charles A. Micaud of the University of Virginia, will give a course on French government for the School of International Affairs at Columbia University.

Drs. Comer Clay and Wilbourn E. Benton, who received their degrees at the University of Texas in June, have accepted assistant professorships

at Texas Christian University and Southern Methodist University, respectively.

At the University of Minnesota, Professor Edward W. Weidner will devote full time during the coming academic year to his work as assistant director of the Research Project in Intergovernmental Relations.

Professor Willmore Kendall, of Yale University, will teach only two-thirds time during 1948–49 to permit him to work on a study of Rousseau. He holds a Guggenheim fellowship for the project and is spending the current summer in Geneva.

Professor Howard Penniman, of Yale University, is conducting a graduate seminar this summer at the New School for Social Research, and Professor Fred V. Cahill is teaching at the University of Oregon.

In order that he may continue his service as director of the State Department's division of historical policy research, Dr. George B. Noble has resigned his professorship at Reed College. Dr. Frank Munk, who carried Professor Noble's work at Reed during the past two years, has become his permanent successor.

At the University of Missouri, Dr. Chesney Hill has been promoted to a full professorship; Dr. Robert F. Karsch, formerly of Westminster College, Fulton, Mo., has been appointed to an assistant professorship; and Mr. William N. Cassella, lately a graduate student at Harvard University, has been made an instructor.

Dr. Norman Wengert, whose doctorate, as well as a law degree, was received at the University of Wisconsin, has been appointed assistant professor at the City College of New York and will teach in the fields of legislation, public administration, and state and local government. Except for a period with the Navy, he has been with TVA since 1941, serving most recently as head of the Program Review Staff in the Chief Conservation Engineer's Office.

Dr. Julian Duncan, who has been doing research for the Interstate Commerce Commission since 1943, has accepted a professorship of economics and the chairmanship of the department at the University of New Mexico. Dr. Duncan was one of three U. S. government observers at the Pan American Railway Congress which met at Havana March 27–April 9.

Mr. Alfred H. Cope, who has been teaching at the University of Pennsylvania, will receive his doctorate at the August convocation and has accepted an assistant professorship of citizenship at Syracuse University.

The University of Illinois has appointed to an instructorship Mr. Robert E. Scott, graduate student at the University of Wisconsin. Mr. Scott will enter upon his duties at the middle of the coming year and will devote his attention principally to Latin American affairs.

During the coming academic year, Dr. J. Michael Hogopian, of the University of California (Los Angeles), will hold a visiting assistant professorship at the American University of Beirut and will offer courses in political science and history.

Professor Stephan K. Bailey, at present on leave from Wesleyan University and attached to the staff of the Washington office of the Public Administration Clearing House, has been awarded the 1948 Toppan Prize at Harvard University for the most distinguished doctoral dissertation in political science. His dissertation topic was "The Politics of Full Employment—A Study in the Formulation of a Public Policy."

Professor Harold R. Bruce, of Dartmouth College, was a member of the recent New Hampshire constitutional convention as a delegate from the town of Hanover. He piloted through the convention a new article on amendment procedure—one of eleven amendments approved in the four-week session.

At the University of Wisconsin, Professor James L. McCamy has succeeded Professor Llewellyn Pfankuchen as chairman of the political science department.

Dr. Claude E. Hawley, wartime chief of psychological warfare against Japan and more recently adviser to Mayor Bowron of Los Angeles on a decentralized plan of city government, has become director of a national clearing house of information on the social sciences lately set up in the Office of Education at Washington, D. C.

At Haverford College, Dr. Herman Somers has been appointed associate professor and chairman of the department of political science. During the past year, Dr. William F. Sollman, German minister of the interior in pre-Hitler cabinets, served as lecturer. Dr. E. Grant Meade has resigned his assistant professorship to accept a position with the Department of State.

At Pomona College, Professor Luther J. Lee has been named assistant to the president, and, beginning in September, will give the bulk of his time to public relations work. He, however, will continue to give his course on American constitutional law. Messrs. Gregory B. Wolfe, of the Fletcher School of Law and Diplomacy, and Edward H. Lombard, of the Univer-

sity of Chicago, have accepted instructorships in the department of government.

At Marshall College, Dr. Paul D. Stewart, formerly of the University of Nebraska, has been appointed assistant professor, and Dr. A. Harris, a member of the political science department, has been made dean of the newly established graduate school. Professor M. G. Burnside has received the Democratic nomination for Congress from the Fourth West Virginia District, and Professor Conley H. Dillon has been teaching at the University of Florida during the second summer session.

Dr. William B. Ballis, formerly chief of the Eastern European Branch of the Division of Research for Europe, Department of State, is joining the faculty of the University of Washington as professor of Russian government and politics in the Far Eastern department. He also will teach courses on Soviet political institutions and Soviet foreign relations in the department of political science. During the spring, Dr. Ballis was in Europe for the Department of State, and during the summer he has been doing research under a fellowship from the Rockefeller Foundation.

President Edmund E. Day has announced establishment at Cornell University of the Myron Taylor Lectures on Foreign Affairs for the consideration of "The United States and Current Problems of World Order." The lectures—twelve in number—will be given during 1948–49, and are made possible by a substantial gift from Mr. Taylor, Cornell alumnus and personal representative of President Truman to His Holiness, the Pope, with the title of ambassador.

Professor Roy V. Peel, of Indiana University, has been appointed a member of the city planning commission of Bloomington, Indiana; Dean Pressly S. Sikes has been made a member of the board of zoning appeals in the same city; and Professor W. Richard Lomax spent two weeks in June on a special personnel assignment with the Department of the Navy in Washington, D. C.

Teaching appointments have been accepted by graduate students at the University of Illinois as follows: A. L. Bennett, as assistant professor at Michigan State College; Frank Grace, as instructor at the University of Michigan; J. H. Millett, as instructor at the University of Rochester; and L. C. Stine, as assistant professor at James Millikin University.

Teaching appointments have been accepted by graduate students at the State University of Iowa as follows: Lawrence E. Dennis, as associate professor at Kansas State College; Kenneth F. Millsap, as assistant pro-

fessor at Michigan State College; and James C. Lien, as instructor at the University of California (Los Angeles).

During the first half of the current summer session, the department of political science at the University of Washington had the services of Professors Bryce Wood, of Swarthmore College, and James T. Watkins, of Stanford University; and during the second half, Professor George A. Finch, of Georgetown University.

Professor Walter R. Sharp, chairman of the department of government at the City College of New York, was recently appointed director of a new project which UNESCO is inaugurating with a view to organizing studies of practical problems of international collaboration by social scientists in various countries. Dr. Sharp is spending the summer in Paris for the purpose of initiating plans for this undertaking. Since the fall of 1946, he has served as administrative consultant to the Interim Commission of the World Health Organization, acting in this capacity as staff secretary for three of its sessions in Geneva. While on sabbatical leave during the spring semester, Dr. Sharp also directed the field research for a monograph on the coördination of United Nations economic and social policy which was published in July under the auspices of the Carnegie Endowment for International Peace.

For a study of problems involved in using social science data and techniques in the solution of government and industrial problems, the Carnegie Corporation of New York has made a grant of $19,000 to Columbia University. Dr. Robert Merton, of the Bureau of Applied Social Research, will conduct intensive interviews with social scientists, government officials, and industrialists to determine the most common problems in the relatively new field of applied social science. The resulting report is expected to be available in about eighteen months.

Columbia University has received from the Carnegie Corporation of New York a grant of $150,000, payable over a five-year period, toward support of an Institute of European Studies, designed to develop a graduate-level program of teaching and research. The Institute's director will be Professor Grayson L. Kirk, and work is expected to start in the autumn of 1949, simultaneously with the opening of a similar Institute in the East-Asian field.

The Carnegie Corporation of New York has made a grant of $60,000 to Princeton University, payable over a period of four years, for study of contemporary national and international problems in the School of Public and International Affairs. In an effort to provide more realistic training

for its graduate students, and at the same time to be of maximum assistance to the federal government, the School plans to set up a series of research projects, each focused on a particular problem of concern to one or several government agencies. Advisory groups will include government and, when appropriate, industrial representatives.

A graduate Program of Studies in United Nations and World Affairs has been instituted at New York University, beginning in September, 1948, with Professor Clyde Eagleton as director. The program is intended to meet the needs of those who wish to study the United Nations close at hand, or are members of the staff of the Secretariat or of Delegations to the United Nations. Schedules of study combining courses from the various departments and schools of the University have been arranged in international relations, international law, international economics, international administration, the United Nations, and intercultural relations. Special schedules will be prepared to meet the special needs of students.

All of the investigative projects contemplated by the Commission on the Organization of the Executive Branch of the Government have now been organized. The full list is as follows: (1) Office of the President and Its Relation to the Departments and Agencies, (2) Post Office Department, (3) Federal Supply, (4) Transportation, (5) Veterans Affairs, (6) Public Welfare, (7) Fiscal, Budgeting, and Accounting, (8) Federal-State Relationships, (9) Public Works, (10) Federal Field Offices, (11) Revolving Fund and Business Enterprises of the Government other than Lending (12) Lending Agencies, (13) Federal Personnel Management, (14) Foreign Affairs, (15) Natural Resources, (16) Regulatory Agencies, (17) Agricultural Activities, (18) Public Relations Activities, (19) Medical Services, (20) Indian Affairs, (21) Government Statistical Services, (22) Records Management.

A five-year apprentice training program in city management will be started this fall at the University of Kansas with the aid of a $50,000 grant by the Carnegie Corporation of New York. This grant—to be utilized at the rate of $10,000 a year—is the largest ever received by the University for a political science project. The program will be directed by Professor E. O. Stene, and will be of eighteen months duration for each of the six graduate students accepted yearly. The first half will consist of on-campus course study; the second, of off-campus internships in city government; and the course will lead to a master's degree and a certificate in public administration. During his internship, each trainee will serve as assistant to a city manager or in a major department of a large city, and his duties will be rotated to acquaint him with all phases of city administration.

The Carnegie Corporation of New York has granted the sum of $25,000 to the University of Washington for the establishment of fellowships in its Institute of Public Affairs. This Institute is both a training center and a source of technical assistance for the various state government departments. Its training is aimed at professional preparation for public administration rather than at the development of teachers or research specialists. The University plans to award fellowships in public administration to men not only from the state of Washington but also from neighboring states and Alaska.

The Washington chapter of the American Political Science Association closed a successful season with a dinner meeting held in the Whittall Pavilion, Library of Congress, on May 27, at which William Y. Elliott spoke on the topic: "After ERP—What?" About seventy-five persons attended. The season opened with a smoker at which Ferdinand Kuhn, of the *Washington Post*, discussed the Marshall Plan. Regular monthly meetings were suspended during December and January, because the annual meeting of the Association was held in Washington. At succeeding monthly meetings, the chapter heard Senator Elbert D. Thomas, of Utah, on the President's civil rights program; Owen Lattimore, of the Walter Hines Page School of International Relations at Johns Hopkins University, on the United States and China; and a very distinguished panel discussing the implications and significance of the Report of the President's Commission on Higher Education. Officers elected for 1948–49 are: Ernest S. Griffith, Library of Congress, president; Reverend Gerald F. Yates, S. J., Georgetown University, first vice-president; William L. Reno, American University, second vice-president; Elwyn A. Mauck, University of Maryland, council member.

A Second Annual Conference on Governmental Problems was held at the University of Utah on June 28–29. The first day was devoted to "The Rôle of American Government in Contributing to World Order," and the second to "Problems in Utah Government and Politics." Professor G. Homer Durham served as director, and Professors Frank H. Jonas and Franz B. Schick were among persons participating prominently in the program. A Labor Institute, held on June 25–26, was also under the chairmanship of Professor Durham.

At the University of California (Los Angeles), Dr. Russell H. Fitzgibbon, recently promoted to a full professorship, has succeeded Professor H. Arthur Steiner as chairman of the department of political science. Professor Fitzgibbon has also been made chairman of the committee on Latin American studies, now administering an undergraduate curriculum which will shortly be extended to include a graduate program. Professor Steiner

will be on sabbatical leave during 1948–49 and expects to engage in research on Chinese government and politics.

The Southern California Political Scientists, an informal association of those in southern California who teach or have professional interest in political science, held their first summer meeting on the campus of the University of California at Los Angeles on the evening of July 9, with approximately one hundred persons in attendance. Informal after-dinner discussion was stimulated by remarks of Professors Herman Finer, of the University of Chicago, and John N. Hazard, of Columbia University. The Southern California Political Scientists consider themselves unique in that they have been "organized" without benefit of constitution, by-laws, officers, dues, or organizational impedimenta of any type.

The Far Eastern Association, Inc., which has published the *Far Eastern Quarterly* since 1941, was reorganized on April 2, 1948, at a meeting in New York City attended by some two hundred enthusiastic Far Easterners into an active, scholarly, non-political, and non-profit professional association of the traditional American learned society type. Its objectives are (1) to unite all persons interested in the study of the Far East, (2) to promote Far Eastern studies, (3) to provide means for the publication of scholarly research and bibliographical material through the *Far Eastern Quarterly*, an annual *Far Eastern Bibliography*, and a monograph series, (4) to promote coöperative activities and the exchange of information between American and Canadian scholars and organizations interested in the Far East and those in other countries through the "Notes and News" section of the *Quarterly* and by other means, and (5) to hold annual (and perhaps regional) meetings with scholarly papers and discussion sessions. The officers are: Arthur W. Hummel, Library of Congress, president; Robert B. Hall, University of Michigan, vice-president; Wilma Fairbank, secretary; Hugh Borton, Columbia University, treasurer; Earl H. Pritchard, University of Chicago, editor of the *Quarterly;* John K. Fairbank, Harvard University, editor of *Monographs;* and nine directors. Annual dues are $6.00. Requests for information and membership applications should be addressed to Wilma Fairbank, 41 Winthrop Street, Cambridge, Massachusetts.

In 1941, the Library of Congress and the University of North Carolina initiated a program of microfilming the official records of the states. Since that time, the plan has undergone considerable expansion in the range of subject-matter encompassed, making proper an alteration in the project's official style. Some 280 rolls of microfilm, consisting primarily of the proceedings of legislative assemblies, along with some closely allied records, were edited and made available for use late in 1942 under the Legislative

Journals Microfilm Project. The project was resumed in 1946 for a two-year period under the new name of Legislative Documents Microfilm Project, adopted in order to take cognizance of the inclusion in the project of two additional series of state documents: Session Laws and Statutes, and Collected Public Documents (issued by authority of the legislatures). During the two years that the renewed project has been pursued, additional lines of expansion have developed and new fields of subject-matter have been covered. The core of the project is now made up of a number of segments, each to be arranged on the film so as to be separable from the main body of it. These segments contain the regular series of documents issued and records kept by each of the divisions of state government. Surrounding each of these segments is a peripheral miscellany of documents, issued occasionally outside of the regular and systematic series. In kind, the materials now encompassed by the various segments of the microfilms may be classified as legislative, statutory, constitutional, executive, administrative, and judicial. The descriptive name of the project, therefore, is now "The State Documents Microfilm Project," and the style of the films to be edited is "The State Documents Microfilms." A full mimeographed progress survey may be obtained from the director, W. S. Jenkins, Box 836, Chapel Hill, N. C.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY DAVID FELLMAN

University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

John T. Amendt; B.S., Loyola University of Los Angeles, 1946. The Effect of Humanism on Political Thinking in America after the Civil War. *Georgetown.*

Thornton H. Anderson; A.B., Kentucky, 1937; A.M., *ibid.*, 1938. Brooks Adams—Constructive Conservative. *Wisconsin.*

Willian M. Barr; Litt.B., Rutgers, 1928; A.M., Columbia, 1936. The Philosophy of Woodrow Wilson. *Columbia.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 722 (1937); XXXII, 796 (1938); XXXIII, 732 (1939); XXXIV, 767 (1940); XXXV, 752 (1941); XXXVI, 734 (1942); XXXVII, 706 (1943); XXXVIII, 766 (1944); XXXIX, 779 (1945); XL, 775 (1946); XLI, 754 (1947).

Items which appeared in the August, 1947, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1947 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. Each item is listed under one classification only. Names starred are merely carried over from the 1947 list, no more recent data having been received.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Check List of Current Researches in Public Administration Reported to the Committee on Public Administration, Social Science Research Council" (mimeographed, most recent edition, January, 1943); "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review;* "List of Doctoral Dissertations in History Now in Progress," formerly published by the Division of Historical Research, Carnegie Institution of Washington, but since the 1938 issue as a supplement to the *American Historical Review;* and "Higher Degrees in Sociology," in the *American Journal of Sociology.* Usually one list is published each year. These are in addition to the "List of American Doctoral Dissertations Printed in 1938," the most recent of an annual series published by the Library of Congress; and Edward A. Henry's "Doctoral Dissertations Accepted by American Universities, 1946–1947," the fourteenth of a series beginning in 1933–34, compiled for the Association of Research Libraries. Consult, for other lists, T. R. Palfrey and H. E. Coleman, Jr. "Guide to Bibliographies of Theses, United States and Canada" (Chicago, American Library Association, 2nd ed., 1940).

Ross Crates Beiler; A.B., Allegheny, 1937; A.M., Iowa, 1940. A Political Content-Response Analysis of Magazine Articles on the U.S.S.R. *Iowa.*

George Cochrane Bryan; A.B., Williams, 1942. Ideas of Leadership in American Political Thought. *Harvard.*

Warner O. Chapman; A.B., Virginia, 1941. The Political Theory of James Madison. *Virginia.*

Thomas Albert Corbett; A.B., St. Marys of the Springs College, 1935; A.M., Ohio State, 1936. The Masses and the International Community. *Catholic University.*

Raymond Francis Cour, C.S.C.; A.B., Notre Dame, 1937; A.M., *ibid.*, 1943. Catholic Action and Politics. *Notre Dame.*

Charles Sebastian La Cugna; A.B., Manhattan, 1937; A.M., Fordham, 1944. The Political Thought of Don Luigi Sturzo. *Notre Dame.*

Richard Eugene Curl; A.B., Ohio State, 1939; A.M., *ibid.* 1940. The Impact of War on Government Publicity. *Princeton.*

Harry Rex Davis; A.B., Texas Christian, 1942. The Political Philosophy of Reinhold Niebuhr. *Chicago.*

Howard E. Dean; A.B., U.C.L.A., 1939. A Critique of the Political Philosophy of Walter Lippmann. *Columbia.*

Alfred DeGrazia; A.B., Chicago, 1939. American Ideas on Representation. *Chicago.*

Lawrence Edward Dennis; A.B., Iowa State Teachers College, 1940; A.M., Minnesota, 1942. A Handbook for the Study of Public Affairs. *Iowa.*

Susan H. Devine; A.B., Kansas City, 1938; A.M., *ibid.*, 1940. The Political and Social Philosophy of Herbert Hoover. *Pennsylvania.*

Karl Wolfgang Deutsch; Dr. of Law and Political Science, Prague, 1938; A.M., Harvard, 1941. The Economic Factor in Nationalism; A Technique of Enquiry Applied to Some Successors of Central Europe. *Harvard.*

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Leslie W. Dunbar; A.M., Cornell, 1946. The Political Theory of T. H. Green. *Cornell.*

Emily L. Ehle; A.B., Smith, 1934; A.M., Pennsylvania, 1939. Leadership in America; A Study of Identification and Acceptance Among Specialized Groups. *Pennsylvania.*

Dominic Elder, C.S.C.; A.B., Notre Dame, 1936; A.M., *ibid.*, 1942. Thomas Paine and his Philosophy of the Common Man. *Notre Dame.*

Dorothy L. Fields; A.B., Texas, 1945; A.M., *ibid.*, 1946. Comparison of Influence on Our Government of the Political Philosophy of James Wilson, Oliver Ellsworth, and Luther Martin. *Columbia.*

Samuel Fox; Ph.B., Chicago, 1924. Majority Rule and Minority Representation as Provided by the Electoral System of the Limited Vote. *Notre Dame.*

Sergio Funaro; A.M., Columbia, 1946. The Political Philosophy of Tommaso Campanella. *Columbia.*

Robert O. Gibbon; A.B., Kansas, 1943; A.M., *ibid.*, 1945. The Relation of the State to the Economic Order in Greek and Roman Political Thought; A Study of Greek and Roman Political Thinkers. *Minnesota.*

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Oscar Aaron Grant; A.B., Hardin-Simmons, 1939. Evolution of the American Concept of Political Democracy, 1607–1830. *Georgetown.*

Alan Pendleton Grimes; A.B., North Carolina, 1941; A.M., *ibid.*, 1946. The *Nation* Magazine; A Case Study in the Development of American Political Liberalism. *North Carolina.*

Norman B. Hannah; A.B., Illinois, 1941; A.M., Louisiana State, 1943. The Purpose of the State in Greek Political Theory. *Minnesota.*

Max M. Kampelman; A.B., N.Y.U., 1940; LL.B., *ibid.*, 1945; A.M., Minnesota, 1946. The Political Philosophy of the C.I.O. *Minnesota.*

Virginia E. Hitchcock; A.B., New Mexico, 1944; A.M., *ibid.*, 1944. The Political Implications of the Works of American Anthropologists. *California.*

Howard L. Jamison; A.B., Hamilton, 1945; A.M., Harvard, 1947. A Study in the Methodology of the Social Sciences: Mill and Dewey. *Harvard.*

Ralph John; A.B., Berea, 1941; S.T.B., Boston University, 1944; S.T.M., *ibid.*, 1945. Apostolic Succession as a Principle of Organization in Church Administration. *American.*

Cecilia Marie Kenyon; A.B., Oberlin, 1943; A.M., Radcliffe, 1945. Human Nature in American Political Thought. *Radcliffe.*

George Alexander King, S.J.; A.B., Boston College, 1931; A.M., *ibid.*, 1932. The Political and Social Theory of Theodore Dwight Woolsey. *Georgetown.*

Mary H. Kirsten; A.B., Wisconsin, 1935. The Syndicated Commentators. *Chicago.*

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Martin Michael McLaughlin; A.B., University of Portland, 1938; A.M., Notre Dame, 1941. Political Processes in American Student Activities. *Notre Dame.*

Thomas Francis Maher; A.B., St. Joseph's Seminary, Yonkers, 1936; A.M., Notre Dame, 1942. Population and Politics; The Political Aspects of Birth Control. *Notre Dame.*

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Ithiel DeSola Pool; A.B., Chicago, 1938; A.M., *ibid.*, 1939. Economic Conditions of Political Freedom. *Chicago.*

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Marcos A. Ramirez; A.B., University of Puerto Rico, 1940; LL.B., *ibid.*, 1942; LL.M., Harvard, 1943; A.M., *ibid.*, 1945. Democracy and Revolution. *Harvard.*

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Myer Alpert; A.B., Maine, 1940; A.M., Harvard, 1948. Public Policy and the Pulp and Paper Industry. *Harvard.*

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Roscoe Baker; A.B., Berea, 1929; A.M., Ohio State, 1933. The Foreign Policy of the American Legion. *Northwestern.*

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Arthur H. Benedict; A.B., Marietta, 1934; A.M., Syracuse, 1935. Federal Centralization Since 1933. *Ohio State.*

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Dorothy C. Carmack; A.B., Southern California, 1943; A.M., Northwestern, 1946. A Decade of the CIO in National Politics, 1936–1946. *Johns Hopkins.*

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Marvin Downey; A.B., Virginia, 1931; A.M., *ibid.*, 1934. The Committee on Rules of the U.S. House of Representatives. *Chicago.*

David Gregg Farrelly; B.S., Springfield College, 1937; A.M., Pittsburgh, 1940. The Senate Judiciary Committee. *Princeton.*

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**John D. Hall;* A. B., Union, 1936; A.M., Syracuse, 1938. The Administration of U.S. Territories and Island Possessions. *Syracuse.*

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Byron Samuel Martin; A.B., Chicago, 1946; A.M., *ibid.*, 1947. Planning for Tota Mobilization for War in the United States: 1920–1940. *Chicago.*

Edwin M. Martin; A.B., Northwestern, 1929. Politico-Economic Phases of the Allied Occupation of Japan. *Northwestern.*

Frank S. Mellor; B.S., Hamilton, 1938; A.M., Harvard, 1939. Employment of Civilians by the Department of the Army; Factors in Determining Whether Military or Civilian Personnel Should be Assigned to Particular Activities or Jobs. *Harvard.*

Leno C. Michelon; Ph.B., DePaul, 1939; M.E., Chicago Teachers College, 1941. Union Responsibility. *Chicago.*

William Alexander Mitchell; B.S., Clemson Agricultural College, 1938; A.M., North Carolina, 1940; A.M., Princeton, 1942. Federal Aid for Education. *Princeton.*

Robert J. Morgan; B.S., Iowa State, 1940. The Presidency under John Tyler. *Virginia.*

Robert L. Morlan; A.B., Denison, 1942; A.M., Minnesota, 1947. The Political History of the Nonpartisan League, 1915–1922. *Minnesota.*

Rita Weber Nealon; A.B., Hunter, 1940; A.M., N.Y.U., 1946. The Contribution of the Attorney-General to the Development of a Strong Executive. *New York University.*

Daniel M. Ogden, Jr.; A.B., State College of Washington, 1944; A.M., Chicago, 1947. The Development of Federal Power Policy in the Pacific Northwest. *Chicago.*

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A. Edward Patmos; A.B., N.Y.U., 1935; A.M., *ibid.*, 1936. Some Recent Attempts of Non-Political Organizations to Influence Federal Legislation. *New York University.*

Richard Pilant; A.B., Washington, 1932. The Monroe Doctrine Geopolitically Considered in the Age of Sea Power. *Washington* (St. Louis).

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Louis A. Radelet; A.B., Notre Dame, 1939. The Presidency and the Crisis; Powers of the Office from Pearl Harbor to V-J Day. *Notre Dame.*

Norman Franklin Reber; A.B., Elizabethtown College, 1930; A.M., Pennsylvania, 1935. Federal Measures to Control Agricultural Production, 1933–1940; A Critical Study of a National Policy. *Pennsylvania.*

Harold Roth; LL.B., Southern California, 1940; B.S., *ibid.*, 1942; M.S., *ibid.*, 1942. Collective Bargaining Patterns in the Motion Picture Industry. *Chicago.*

James E. Russell; A.B., Princeton, 1938; A.M., Columbia, 1940. Federal Activities in Higher Education. *Columbia.*

Martha Saenger; A.B., Ohio State, 1942; A.M., *ibid.*, 1945. The CIO and the Political Action Committee, 1944–48. *Ohio State.*

Carl Santoro; A.B., Ursinus, 1940; A.M., Pennsylvania, 1945. A New Approach to the Problem of Non-Voting. *Pennsylvania.*

Richard L. Seggel; A.B., Princeton, 1936; A.M., *ibid.*, 1938. Government and the Veteran. *Princeton.*

James B. Shahan; A.B., Davis and Elkins, 1931; A.M., West Virginia, 1935. A Study of Some of the Military Aspects of American Colonial Administration in the Southeast Pacific. *Ohio State.*

Ruth Caridad Silva; A.B., Michigan, 1943; A.M., *ibid.*, 1943. Presidential Succession. *Michigan.*

**Samuel R. Solomon;* A.B., Syracuse, 1930; A.M., *ibid.*, 1931. Uses of Executive Veto Power. *Syracuse.*

Gilbert Y. Steiner; A.B., Columbia, 1945; A.M., *ibid.*, 1948. The Congressional Conference Committee, 70th to 80th Congresses. *Illinois.*

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Donald Frederick Whitehead; A.B., University of Wichita, 1941. American Public Opinion and Roosevelt's Foreign Policy, 1933–1941. *Chicago.*

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Doris S. Blaisdell; A.B., American, 1944; A.M., Wisconsin, 1945. Mr. Justice James Clark McReynolds. *Wisconsin.*

H. Paul Castleberry; A.B., Texas Technological College, 1941; A.M., *ibid.*, 1942. Legal and Political Questions in the Jurisprudence of the United States Supreme Court. *Chicago.*

Janice Evelyn Christensen; A.B., Minnesota, 1944; A.M., *ibid.*, 1946. Constitutional Problems of National Control of Elections in the United States. *Minnesota.*

Samuel Ingalls Clark; A.B., Chicago, 1943. A Study of Mr. Justice Oliver Wendell Holmes. *Chicago.*

Robert Fairchild Cushman; A.B., Cornell, 1940; A.M., *ibid.*, 1948. Religion and Education in American Constitutional Law. *Cornell.*

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Delavan P. Evans; A.B., Occidental, 1933. The Use of the Concept of Inherent Powers by the Supreme Court of the United States. *California.*

Royal C. Gilkey; A.B., Cornell, 1941; A.M., Columbia, 1947. Mr. Justice Frankfurter and Civil Liberties. *Columbia.*

Walter Gouch; A.B., St. Paul's College, 1936; A.M., Catholic University, 1944. Judicial Philosophy and Opinions of Justice Cardozo. *Johns Hopkins.*

Howard Devon Hamilton; B.S., Purdue, 1942. Legislative and Judicial History of the Thirteenth Amendment. *Illinois.*

Francis H. Heller; J.U.C., Vienna; LL.B., Virginia, 1941; A.M., *ibid.*, 1941. The Sixth Amendment to the Constitution of the United States. *Virginia.*

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Timothy G. Higgins; A.B., Nebraska, 1942; A.M., Wisconsin, 1947. The Politics of the Supreme Court of Wisconsin. *Wisconsin.*

Charles Sebastian James, Jr.; A.B., Furman, 1937; A.M., Mercer University, 1939. The Proposed Twenty-Second Amendment to the Constitution: Background and Development of the Movement to Limit the Presidential Term. *North Carolina.*

Thomas George Karis; A.B., Minnesota, 1940; A.M., Columbia, 1942. The Weight of Constitutionality on Congress; Some Case Studies. *Columbia.*

Harvey M.Karlen; A.B., Chicago, 1939. Wage Determination in Chicago. *Chicago.*

Robert C. Kennedy; A.B., Baldwin-Wallace, 1934. The Development of Labor Legislation in the Eightieth Congress (First Session). *American.*

William L. LaRue; A.B., Northwestern, 1933. Patents and Copyrights in American Public Law. *Princeton.*

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Roy Miller; A.B., Hamline, 1927; A.M., Minnesota, 1928. Municipal Civil Service Law in Minnesota. *Minnesota.*

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BOOK REVIEWS AND NOTICES

Francis Lieber: Nineteenth-Century Liberal. By Frank Freidel. (Baton Rouge: Louisiana State University Press. 1947. Pp. xiii, 445. $4.50.)

This volume is an important supplement to previous writings on Lieber by Perry (1882), Harley (1899), Phinney (1918), and the Dorfman-Tugwell study in 1938. It is based on a wide range of Lieber manuscripts in many libraries.

The varied and stormy events in the life of Lieber are vividly presented by the author and throw much light on the evolution of his political philosophy. Probably no mere "professor" in the nineteenth century had as rich and exciting a life as the German immigrant whose name is perpetuated by the Lieber professorship in history and political philosophy at Columbia University.

Attention is given to Lieber's Germanic origins, particularly his relationship with Schleiermacher, and also Niebuhr, whose influence upon Lieber has long been recognized. "The religio-political ideas of Schleiermacher and Jahn," says Freidel, "largely filled the mind of Lieber" (p. 22), particularly arousing his nationalistic enthusiasm and emphasizing the importance of the individual in relation to the community. This influence is reflected in Lieber's *Political Ethics* particularly.

The argument for nationalism was, of course, a basic part of Lieber's political and philosophical activities—all the more remarkable in view of his long experience with South Carolina and states' rights. His emphasis on the "organic" theory of nationalism was one of the important contributions made in the great struggle over the nature of the Union.

Freidel also calls attention to less well known aspects of Lieber's politics, namely, his bitter criticism of Thomas Jefferson—"a most mischievious ferret"—"the very underminer of the Union." Likewise his attack upon Darwin and Darwinianism was very savage. The author points out Lieber's unfriendly attitude toward feminism, which he maintained would lead inevitably to "promiscuous intercourse of the sexes" and to communism of goods (p. 416). Likewise, the organized labor movement was shocking to Lieber.

As an informative book dealing with the daily life of a dynamic personality, Freidel's treatise is of great value. The relation between Lieber's political philosophy and his political experience is far more difficult to expound, and the author may well be pardoned for not presenting a complete and unassailable "elucidation." No one has done any better, or as well. For those interested in the development of American political thought, this volume is of very great value.

Charles E. Merriam.

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The Administrative State; A Study of the Political Theory of American Public Administration. By Dwight Waldo. (New York: Ronald Press Company. 1948. Pp. viii, 227. $5.00.)

Of all political scientists, students of public administration have been under the greatest pressure to keep their feet on the ground, to be practical, to apply social science as the engineer applies physical science. Such students would be thought to be at the opposite end of the political science spectrum from the political theorists. Now Professor Waldo has made the perilous trip from the spectral realm of political theory to the reddish-hued practical world of public administration.

The result is a major contribution to the literature of public administration. Whether the administration student spends his waking hours preaching the merit system, counting manhole covers, or delightedly tearing up the administrative "principles" enunciated by his seniors, he is acting on premises that need to be exposed and tested. Waldo has articulated and appraised these largely inarticulate premises. It will occasion no wonder that there is a difference in appearance of the same phenomena viewed through the rose-colored glasses of devotees of the administrative cult and viewed through the jaundiced eye of a political theorist.

The book has three parts. The first, concerned with the rise of American public administration as a field of study, reviews the relevant social, economic, and ideological trends of recent American history; the personnel training, research, and administrative reorganization movements; and the influence of business and the scientific management movement on public administration. In the second part, five "problems of political philosophy" are chosen as *foci* for analysis of the literature of public administration. These are "the good life" (*i.e.*, ultimate values and the ends of the state), the criteria of action, the selection and function of administrators, the separation of powers, and centralization versus decentralization. The concluding chapters, constituting Part III, are devoted to a critique of such fundamental concepts as principles of administration, the theory of organization, scientific method in the study of public administration, and the deification of economy and efficiency.

Waldo's approach is so stimulating and so basic to the proper orientation of public administration that it invites an extended response by some student of administration. Here there can be only a suggestion of the subjective responses of one student to the Waldo stimuli. The focus is on ideas in the abstract, as may be appropriate in political theory. But as a result, all writers on public administration tend to be hustled together into a mass, without clear groupings in terms of the era for which they wrote, or the governmental level they were considering. In Professor Waldo's scale of pleasure-pain values, iconoclasm ranks high in pleasure content.

Iconoclasts are among our most valued scholars. But it is a bit dismaying to find the hortatory advocates of "good government," the scholars who seek to build a science of public administration, and the pragmatists all condemned.

A fine bibliography both in extensive footnotes and in a special listing will prove of exceptional value to students. Yet the treatment of contributors to the literature has some curious features. Although several minor figures are given attention, such a thoughtful and influential writer as Arthur W. Macmahon is wholly neglected. Understandably, the principal books and articles consulted dealt with broad aspects of administration. However necessary this was to reduce his task to manageable proportions, Waldo has had to neglect the bulk of careful studies of specialized problems and particular agencies and programs. Many of these studies have theoretical significance apart from their more limited concerns.

The distinction between staff and line seems to be dismissed both in the identification of administrators as a ruling class comparable to Plato's guardians, and in the failure to note the important pressure for strengthening line agencies *vis-à-vis* staff agencies.

One question of approach remains. To what extent should writers on public administration be condemned for sharing the spirit of the age, for failing to revolt and blaze new trails in the reconciliation of ultimate values and scientific study of means to assumed ends, or for taking time to move out of an anti-principles empiricism to a new synthesis of public administration? A sense of history and a consciousness that public administration is a specialized field of applied social science would lead, it would seem, to a more tolerant view of the derivative character of the political theory that finds expression among students of public administration.

It is easy to raise questions such as these. They are minor, though, in relation to a pioneering work of the high quality of *The Administrative State*. It will force the tillers of the field of public administration to reëxamine critically the quality of their soil and the sharpness of their tools. Premises should not go unchallenged. Professor Waldo has formulated the long-needed challenge, and the result should be a more soundly grounded literature of public administration.

JAMES W. FESLER.

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Governmental Costs and the Tax Level. BY LEWIS KIMMEL. (Washington: Brookings Institution. 1948. Pp. iv, 135. $2.50.)

At one time, the National Industrial Conference Board prepared and published with fair regularity volumes on the cost of government in the United States. The authors usually related their data to the tax problem.

Now the Brookings Institution, with Dr. Kimmel, has taken over this important service. The new series has the important innovation that it is concerned mainly with a projection of expenditures and revenues into the future. No doubt, the innovation reflects the new interest in fiscal planning. With 1946 as its base year, this volume estimates budgets for 1952.

Of course, nothing like precision is claimed for the product. Defense expenditures are placed at a probable 9.5 billions and foreign loans and relief at one billion. If this seems conservative in view of present trends, the acceptance of federal aid for general education and housing in the estimates may be cited on the other side.

The summary table shows a probable total federal outlay (exclusive of social security) of $26,050 millions and a total for all governments of $40,500 millions. To this may be added $2,500 millions for social security. The total is 24.8 per cent of projected national income ($175 billions).

On the surface, says the author, this looks like an optimistic picture: the projected outlays are six to eight billion dollars less than estimated expenditures for the present fiscal year, which is itself estimated to yield a substantial surplus. Nevertheless, federal finances are precarious because (1) they are based upon an intense boom that cannot be expected to continue, and (2) they encounter a persistent demand for tax reduction (some of which has been realized since this book was published).

The author stresses the fact that our federal revenue system is highly cycle-sensitive. A drop in production means a larger drop in national income, which means a larger drop in the income tax base, which means a still larger drop in income tax receipts. A twenty per cent decline in national income would perhaps involve a thirty per cent drop in revenues, which would turn a projected surplus into a ten-billion-dollar deficit.

In his revenue analysis, to which the second half of the book is devoted, the author includes an estimate of the losses that would follow from various income tax changes, personal and corporate. Like all other analyses of these factors, he concludes that the elements of coverage and starting rate for the personal tax are of paramount significance for the revenue. Priority for corporate tax reduction is suggested.

The analysis of state and local taxation shows some prospective gains for the sales tax as a result of four new states entering this field in 1947. The property tax, notwithstanding allegations that it has reached the limit of its elasticity, is destined to expand substantially. Municipalities do not have many available alternatives and are under pressure. Both assessments and rates are rising and will rise.

The book provides a very useful look into the public-finance future. While it involves extensive statistical calculations that a reviewer cannot retrace, it appears to be done with due care. One or two passages are extremely difficult to follow (for instance, the explanation of the probable

level of the 1952 public debt on p. 48). The author might have paid his respects to the view that a substantial drop in national income *calls* for a federal deficit (built-in flexibility). But the warning against overly sanguine tax-reduction programs is very timely and sound.

HAROLD M. GROVES.

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City, Region, and Regionalism; A Geographical Contribution to Human Ecology. By ROBERT E. DICKINSON. (New York: Oxford University Press. 1947. Pp. xv, 327. $4.75.)

This volume in the International Library of Sociology and Social Reconstruction, formerly edited by the late Dr. Karl Mannheim, should have a wide appeal. Students of local government, general public administration, public planning, geography and sociology, among others, will find it interesting, although none is likely to find his curiosity and his appetite for a discussion of regionalism entirely satisfied within the limits of this rather small book.

The author, a Reader in Geography at the University of London, has also to his credit a more intensive study entitled *Regions of Germany*. To him, "a region is an area which is homogeneous in respect of some particular set of associated conditions, whether of the land or of the people" (p. 1). Under a definition so generously broad, many different types of entities, large and small, might be classed as regions. In fact, however, the author adopts a viewpoint that narrows somewhat the field of the discussion. In his own words, "the theme of the book is the concept of the nucleated settlement, whether village, town or city, or city sub-center as a focus of human activity and organization in the service of a surrounding tributary area. Such an area, through the welding force of its centre, acquires a degree of homogeneity which permits of its being regarded as a natural social unit or community space-grouping. This space-grouping is a fundamental characteristic of society . . . " (Preface). Areas or entities that do not have such centers receive relatively little attention.

The breadth of the author's definition of a region is matched in some degree by the wide extent of the writings on regionalism, European, English, and American, that he surveys. Cited and quoted are, for example, the contributions of such well-known American scholars as E. W. Burgess, N. S. B. Gras, J. H. Kolb, R. D. McKenzie, H. W. Odum, and Dwight Sanderson. The works of various English and Continental writers are also passed in review. To many readers, this analysis of important publications on the subject of regionalism will make the work especially valuable. Numerous maps and diagrams also serve to increase the usefulness and the interest of the text.

At the same time, the reviewer failed to find in the book any great

clarification of the various concepts of region and regionalism; nor is the special contribution of geography to the study of regionalism brought out in sharp relief. Economists, historians, and sociologists as well as geographers have contributed to the concept of the nucleated settlement which is the theme of this book.

The author makes it clear, however, that he stands with other regionalists in not liking the political and administrative areas into which the nations and the world are now divided. The aim of regional studies is "the substitution of new geographical units for existing administrative units, which, as a legacy of the past, are quite unsuited to the requirements and structure of modern society" (p. 1). A "natural" unit or area for the present time is the thing desired. A "natural community" is geographic; it is economic; it may be several other things; but by an unstated assumption it is not political or administrative. As a result, the political and administrative needs and conditions of society are not analyzed to determine what a natural political or administrative unit might be. Herein lies one of the most serious deficiencies of many regional studies, and perhaps one of the reasons why plans for new regions so seldom achieve acceptance. To modify an old saying, the authors of such studies are in many cases trying to rewrite *Hamlet* without its main character.

WILLIAM ANDERSON.

University of Minnesota.

Thoughts on the Constitution. BY THE RT. HON. L. S. AMERY. (London and New York: Oxford University Press. 1947. Pp. xi, 166.)

This book, based on lectures given at Oxford University, is now in its second edition in England. It is already on its way to recognition as one of the few classics on the British constitution.

Bagehot wrote of the constitution as it appeared in a period of unexampled peace and prosperity. The present book deals with it in a period when Britain staggers through economic quicksands, beset—like all other democratic parliamentary systems—by grave external dangers. The trend towards wider political union in Western Europe makes more important than ever an understanding of the very real differences between the British constitutional system and parliamentary democracies struggling to survive on the Continent.

The writer of this book combines the qualities of statesman, man of action, and man of letters. The combination in itself is English enough; but the degree is unusual. Fellow of All Souls, barrister at law, Alpinist, correspondent of the *London Times* in the Boer War and later in Germany, member of the British General Staff in World War I, Mr. Amery has been for thirty-four years a member of Parliament, and half of those years in office. His major portfolios have been the Admiralty, Colonies, Dominion

Affairs, and India. His work at the India Office, from 1940 to 1945, contributed to Allied victory, as well as to political stability inside India on the basis of which independence became possible. In the years of office (as Whitehall knows better than the general public), few ministers have had a better grasp of principle and mastery of detail than the writer of this book; and few have worked as hard or as steadily in public office.

Thoughts on the Constitution consists of four sections entitled: "The Essential Nature of the Constitution;" "How to Preserve Parliamentary Government"; "The Machinery of Government"; and "The Evolution of the British Commonwealth."

The first section is an illuminating historical analysis devoted to the relation of government to legislation, of the crown and the cabinet to Parliament. It shows how a misinterpretation which constitutional writers took from Bagehot seemed to identify parliamentary government with a weak executive. Mr. Amery points out that just because the British form of constitution is one in which "government as such is the first consideration," it could not easily be combined with systems based on "the prevalent Continental conception, derived from the French Revolution, of political power as a delegation from the individual citizen through the legislature to an executive dependent on that legislature." Such a system is "bound by its very nature to be weak and unstable." The English system, on the contrary, is government, not by Parliament, but "in and with Parliament . . . . Our system is one of democracy, but of democracy by consent and not by delegation, of government of the people, for the people, with [but not by] the people." Bagehot's description of the cabinet as a committee of Parliament corresponds to neither present facts nor past history. Mr. Amery illustrates the point by an interesting analysis of the process by which British cabinets over the past hundred years have actually been chosen. He concludes that "Government and Parliament, however closely intertwined and harmonized, are still separate and independent entities, fulfilling the two distinct functions of leadership, direction, and command, on the one hand, and of critical discussion and examination on the other. They start from separate historical origins, and each is perpetuated in accordance with its own methods and has its own continuity . . . . Parliamentary government means government, not by Parliament, but, to use the old phrase, government by the 'King in Parliament'."

The British system, as the author notes, has in fact achieved in a rare measure the strong executive without which modern parliamentary government cannot endure. Switzerland has achieved it by a different method—an executive elected by the legislature for its entire lifetime; the United States by still another method, the election—forms aside—of the chief executive by the whole people.

The chapter on Parliament deals with its evolution over the past fifty years and has important things to say on the growth of subsidiary legislation through orders in council and ministerial regulations, the advantages and drawbacks of a committee system of the American type, the reform of the House of Lords, and the supplementing of geographical by functional representation. The chapter on the machinery of government throws new light on the actual working of the cabinet system and analyzes the means whereby a government can plan ahead as well as conduct affairs from day to day.

In some ways, the long chapter on the evolution of the British Commonwealth is the most important part of the book. The more closely the United States is called upon to work with Britain and the British Commonwealth, the more important it is that leaders of American thought and action should read and understand this chapter. Mr. Amery was better qualified to write it than any other British statesman; for since 1911 he has been closest officially and in spirit to the main phases. The Imperial War Cabinet of the First World War was his suggestion. He was responsible for the creation of the separate Dominions (now Commonwealth Relations) Office. He prepared for and guided through the famous report of the 1926 Imperial Conference and its 1929 sequel, which laid the basis of the Statute of Westminster of 1931. His account of these events, though brief, is an important historical contribution.

Mr. Amery was not one of those who merely acquiesced in a Commonwealth formed of a family group of "freely associated" states, whilst still believing in some sort of imperial federation. He favors indeed a small permanent Commonwealth secretariat for liaison between cabinets. (One between Parliaments is also perhaps desirable). He notes the anomaly that such a secretariat does not exist within the family group, whereas it was accepted in the wider League of Nations and United Nations. The formula of the 1926 Imperial Conference, "unity of thought and coöperation in action," had long been the basis on which he had been working—for example, in building up parliamentary relations between the now thirty-nine parliaments of the Commonwealth and Empire. He tells too little of that story and nothing of his own part. (It is told in some detail in the reviewer's article in this REVIEW in December, 1942.) Incidentally, the expedient of "all party delegations," linked organically with the Imperial Conference of governments, which he suggests as desirable, was tried out successfully in 1937.

The passages that show the deepest insight are those on the crown and the monarchy, "the symbol of the unity and continuity of our national and Imperial life." They are not merely the *symbol*, but in many ways, direct and indirect, also an *instrument*. Twenty-two years ago, at Chatham

House, Mr. Amery outlined in a classical passage[1] the relation of the crown to the Commonwealth-wide citizenship (known as the "common status") which is based on the common allegiance to the king. In the last pages of the present book, he touches on the part of the monarchy and crown in uniting the Commonwealth and Empire by a "common family feeling" and a "wider patriotism."

He says rightly and well that there is "no such thing as a definite separation between Monarchy and Crown, no mere personal union of separate Crowns. . . . Constitutionally and legally, the British Empire, while in one aspect comprising a variety of governments, many of which work in complete independence and subject to no external authority, is also, in another aspect, one single, indissoluble body corporate composed of the King and his subjects." It is no accident that His Majesty's ministers in his different independent governments think of themselves as colleagues, for they are "fellow servants of the same Crown" and have and feel some sense of responsibility for the whole "body corporate." If these imponderables are as yet largely unknown to political science, it is a sign of how much still escapes through the coarse meshes of its net.

H. DUNCAN HALL.

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The Reshaping of French Democracy. By GORDON WRIGHT. (New York: Reynal and Hitchcock. 1948. Pp. x, 277. $3.50).

Although this first book on the Fourth Republic is intended for the general public, it will be welcomed by students of comparative government. Its main theme is the story of the painful birth of the new constitution, but it is also concerned with the main political forces at work in France since the liberation. The issues dividing the parties and their tactical maneuvers for position are ably described and interpreted. The book combines an objective viewpoint and sound judgment with a real knowledge of traditional issues and contemporary political figures and forces. The style is concise and sprightly, with frequent touches of humor. From the point of view of the student, it is regrettable that a more extensive bibliography has not been given and that footnotes have been omitted. Another legitimate criticism is that political leaders are often credited in the making of their decisions with a foresight that is hardly to be distinguished from Dr. Wright's hindsight.

The author shows how, after a long process of exhaustion, divided Frenchmen came to accept a constitution that basically resembled the one they had almost unanimously rejected the preceding year. The results

[1] Reprinted in A. Lawrence Lowell and H. Duncan Hall, *The British Commonwealth of Nations* (World Peace Foundation, 1927).

of the referendum are accurately described in one of Dr. Wright's well-borrowed witticisms: "All Gaul is divided into three parts: those who say reluctantly yes, those who say unconditionally no, and those who simply don't give a damn." The resurrection of the Third Republic, minus the Senate, was not surprising. As the author points out: "Between the partisans of a strong executive and the partisans of an omnipotent legislature, there was no common meeting ground, except the ground on which the Third Republic had been built. It was not so much by choice as by force of circumstances that the politicians eventually found themselves back there." Incidentally, the author would have walked on more solid constitutional ground if he had kept clear of the famous distinction between "parliamentary government" and "government by assembly," a distinction that belongs to the vocabulary of electoral campaigning rather than to that of constitutional theory.

Dr. Wright correctly points out that the imperfections of the present system are not the main issues that have divided opponents and friends of the new constitution. "The fundamental fact was that France was deeply divided on political, economic, social, and religious issues. The parties helped to maintain that division, but they were its consequence much more than its cause. Men like De Gaulle believed that France could not long survive such division, and that a degree of unity could be enforced through a constitutional mechanism plus the influence of a strong leader. Men like Léon Blum believed that France's division could be overcome only by a gradual evolutionary process . . . that time and returning prosperity might erode some of the internal barriers, allowing a coherent and stable majority to emerge." The reviewer agrees with Dr. Wright that the main difference between the Third and Fourth Republics results from the new system of monolithic parties rather than from the constitution itself. The indispensable stability of the government can now be assured under a cohesive majority. Given the importance of the new parties, it is to be regretted that the author has not given us a more careful analysis of the party system.

A study of current events is bound to suffer from a certain lack of perspective, and the cautious historian can hardly be blamed for avoiding dangerous generalizations. Still, it is unfortunate that an otherwise excellent narrative of the postwar crisis in France should lack the scope and depth of first-rate historical writing. The events described here would have carried greater significance had they been linked to others, both in time and in space. The interdependence of domestic and foreign policy could have been stressed to point out the universality and deeper meaning of the present ideological battle in France. The philosophical issues underlying the struggle of the three "forces" are only superficially sketched. Nor are the psychological, and more or less permanent, elements of weakness in

France's democracy sufficiently dealt with. As serious is the lack of an adequate treatment of France's economic and social problems, which are inseparable from the political issues. The Monnet Plan and the Marshall Plan are dismissed in a few lines, the nationalizations in a few pages.

In spite of its drawbacks, perhaps inevitable in the circumstances, Dr. Wright's book is a most useful contribution to the understanding of the Fourth Republic.

C. A. MICAUD.

University of Virginia.

The Spanish Story. By HERBERT FEIS. (New York: Alfred A. Knopf. 1948. Pp. vii, 282. $3.50.)

The author of this book served as Adviser on International Economic Affairs in the State Department from 1941 to 1944. As such, he followed at close range the inside story of the relations between Franco Spain and the two belligerent camps during the Second World War; and in this book he tells the story of these relations pieced together from American and captured Axis documents.

The story is a fascinating and instructive one for several reasons. There is Spain, miserably weak, with her sympathies on the Axis side, yet for her very life dependent upon British and American oil. There is Germany, whose war effort depended upon Spanish wolfram as the economic life of Spain depended upon British and American oil. There are Great Britain and the United States who, at least up to the beginning of 1944, had a vital interest in preventing Spain from throwing in her lot completely with Germany and delivering Gibraltar and Spanish North Africa to the German army. The story of these three-cornered relations is indeed a case study in Machiavellian power politics. Each of the participants had to exert pressure, but not too much, had to make concessions, but not too many; had to calculate how far the other side would yield, and stop just short of that breaking point. Whatever the shortcomings of the Franco régime, lack of diplomatic ability and of hardheaded deviousness are certainly not among them. Franco and his aides emerge from Mr. Feis' pages as consummate masters of the Machiavellian art. If one considers the precarious domestic and international position in which the Franco régime found itself in the years immediately after its victory over the republican government, one must indeed marvel at the dexterity with which it kept itself in power. It must, however, be noted that it could rely upon one powerful and unswerving ally: British foreign policy. And here lies the second lesson which Mr. Feis' book conveys.

On the eve of Franco's victory, on February 19, 1939, Neville Chamberlain wrote in his diary: "I think we ought to be able to establish excellent relations with Franco, who seems well disposed to us, and then, if the

Italians are not in too bad a temper, we might get Franco-Italian conversations going, and if they were reasonably amicable, we might advance towards disarmament." While the British policy which had first brought Franco into power and then kept him there was profoundly mistaken in view of the objectives which that policy had set for itself, it was pursued throughout the war by the Churchill government with single-mindedness, ability, and ultimate success. Mr. Feis' story shows with unprecedented clarity the at once supple and ruthless methods of British diplomacy, once it has set its sights on a certain objective. How British diplomacy was able to prevail over American opposition and draw American policy toward its own support is the third lesson which the student of foreign policy can learn from this book.

The crisis in American-British relations with regard to policy toward Spain occurred in April, 1944, over the issue of forcing Spain to stop the export of war materials to Germany through stopping the flow of oil to Spain. Mr. Hull was in favor of forcing the issue; Mr. Churchill was in favor of compromise. It was Mr. Churchill's policy that won. The methods by which that victory was won provide a typical example of the traditional strength of British diplomacy over against the traditional weakness of American diplomacy in their mutual relations. Mr. Churchill fought his war with the peace settlement in mind, and however mistaken his conception of the British national interest may have been in the Spanish question, it was at least a conception of the British national interest which guided him. On the side of Mr. Hull, there was only a vague notion of what was right and moral indignation, and thus he became the unwilling second to a British policy of which he did not approve, but which he did not know how to oppose.

The pattern which the crisis of April, 1944, reveals is a typical one, multiplied many times before and since. That pattern carries for the framers of American foreign policy a lesson by far transcending in importance the concrete issue on which it arose. Mr. Feis deserves our gratitude for having made that pattern clear for all to see.

HANS J. MORGENTHAU.

University of Chicago.

Russia in Flux. BY SIR JOHN MAYNARD. Edited and Abridged by S. Haden Guest, from *Russia in Flux* and *The Russian Peasant and Other Studies.* With a Foreword by Sir Bernard Pares. (New York: The Macmillan Company. 1948. Pp. xviii, 564. $6.50.)

Amid the deluge of superficial, and often emotionally biased, books produced on Soviet Russia, Sir John Maynard's study stands apart as a monument of honesty, scholarship, and erudition.

In twenty-seven chapters of his bulky volume, Maynard discusses

many aspects of Russian life and history during the nineteenth and twentieth centuries. He covers a wide range of topics such as peasantry, intelligentsia, the Church, philosophical trends, the revolutions of 1905 and 1917, with a thorough discussion of the Soviet experiment.

The book is written almost entirely without footnotes and with only few documentary references—the privilege, no doubt, of a writer whose authority on the subject is so well established. Maynard's style is not popular; lengthy sentences require special concentration to grasp their significance. But the book is not written for mass consumption. It is addressed to the advanced student of Russia; and the effort that the reading requires is rewarding.

Russia in Flux, to use the author's words, "aims at presenting a clue of social and political history, along with a glimpse of the currents of thought that had existed in the Russia of the Tsars." Maynard devotes some of his most valuable chapters to a discussion of the peasantry.

Of particular interest to many readers will be Maynard's remarks about the controversial problem of nationalities and self-determination in Russia. "To some extent, and generally in the West," he writes, "the non-Great Russian peoples were the inheritors of cultures superior to that of the Great Russians, and were materially richer. This was very marked with the Finns, Germans, Poles, Armenians, and Georgians. Except for the Caucasian mountaineers, the Mongolians, and the nomad tribes of the North, the Great Russians were not governing their admitted inferiors; and there was little about Great-Russian culture of that attractiveness which sometimes explains an unexpected tolerance of unfamiliar influences" (p. 446). These words may cause the reader to ponder concerning the present juxtaposition of Soviet and non-Soviet cultures in Central-Eastern Europe and its ultimate effects on the future of Europe as a spiritual entity.

Maynard's work is not a mere presentation of facts. It is also an analysis and an interpretation. As a result, several of his judgments are open to controversy. The author states at the outset (p. 14) that "a thesis of these studies . . . is that freedom is divided between the Western democracies and the U.S.S.R., part to the one and part to the other. It is incomplete in both." He takes pains to stress the overwhelming force of Russian tradition: "All Russian régimes have been sudden and arbitrary . . . ". "Russia has her own ethical standards, and her rulers must conform to them, but they are not those of the West." "Old Russia was always rough, with its Siberian exiles, its judicial floggings, and its free use of the knout." Yet, despite this emphasis on the force of heritage, Maynard stresses the courage and boldness with which the Bolsheviks have freed themselves from the fetters of the past, and, confident of the strength and wisdom of man, have managed to remake history after their own fashion. "Marx,"

writes Maynard, " . . . ended the domination of fate. Man is not bound to a pitilessly revolving wheel, but can contribute to the making of his own history." These statements are certainly thought-provoking. They reveal also, in the reviewer's opinion, some contradiction in the author's views. Government by terror is inherited, therefore Soviet leaders can do little against it—the author seems to imply. But at the same time Soviet leaders are capable of displaying an iron will, if we take industrialization as an example. Should the reader infer that in "bad" things (from the Western viewpoint) Soviet leaders are guiltless, because of the force of tradition, and in "good" things—if any—they are praiseworthy, because of their free, dauntless will?

More inconsistencies of similar character could perhaps be pointed out. They stem partly from the fact that while the bulk of the book was written in the later thirties, some parts were added during the early forties, at the time of Western-Soviet alliance against Nazi Germany. The latter fact seems to have colored somewhat the author's opinions—and thus very sober and impartial observations made in the earlier period seem so be slightly contradicted by Maynard's wishful optimism as to the future East-West coöperation in peacetime.

It would be unfair, however, to over-emphasize these points. The book supplies the reader with splendidly selected material and is conspicuous for its deep insights into many aspects of Russian life. It is difficult to imagine even a most erudite scholar who would not benefit from studying it. *Russia in Flux* constitutes a welcome and valuable contribution to the literature on Russia.

GEORGE LENCZOWSKI.

Hamilton College.

Voyennaya Ekonomika SSSR . . . Otechestvennoi Voiny ["The War Economy of the USSR in the Period of the Patriotic War"]. BY N. VOZNESENSKY. (Moscow: Ogiz. 1947. Pp. 191.)

In view of the seriously deteriorated relations and prevailing war-like tensions between the USSR and the United States, this volume, *The War Economy of the USSR in the Patriotic War*, assumes great significance. Nikolai A. Voznesensky is chief of the State Planning Commission, Deputy Premier of the USSR, and a member of the powerful policy-making *Politbureau*. Judging by the comprehensive reviews of this book thus far published in Russian academic journals, the treatise will probably remain for some time the leading official textbook on the political economy of the Soviet system. The dual use of the word "war" in the title emphasizes the fact that in 1914 Russia participated in the First World War without any war economy. According to the author's political and economic theories, Soviet Russia's invincible might to with-

stand the German onslaught and invasion in June, 1941, was due exclusively to the Soviet organizational feats in moving industries to the East and to the structure of the planned socialist economic system, which has been and still is synonymous with the wartime economy of the USSR. Consequently, the postwar Soviet Russian political economy must needs continue to be directly by the same fundamental principles and experiences that guided the wartime economy. Thus the monetary reforms promulgated on December 16, 1947, are likewise reflections of this announced policy.

The book is replete with statistics and economic data to substantiate the thesis that total economic planning is inherent in the Soviet system because it utilizes the economic laws of production and distribution, the laws of value and costs, in the interest of socialism as it is being effectuated in the USSR. More important, the Soviet economic system, which has been basically a war economy, has served the nation well preceding, during, and after the Second World War. It follows, therefore, that these basic war-economy principles should continue to be the core and kernel of the national economy during the reconstruction period, and for further industrial development of the USSR, and eventually to enable it to surpass and overtake the leading capitalist countries, especially the United States.

Indicative of the tremendous industrial progress made during the Second World War are the following facts given by Voznesensky. In the final battle for Berlin alone, the Soviet (Red) Army had four times as many divisions, five times as much artillery, fifteen times as many tanks, and five times as many aircraft as before the war. Specifically, in April, 1945, the Russians had 41,000 guns and mortars, 8,400 aircraft, and 6,300 modern break-through tanks (p. 87)—all of which were produced by Soviet industries, especially in the plants moved to the Urals and Siberia following the invasion of Russia by Nazi Germany in June, 1941. The author further asserts that only complete state control over all of the segments of the national economy could have achieved this gigantic industrial and military task.

True to form, Voznesensky pays the highest tribute that is humanly possible to the "Vozhd" (leader), Generalissimo Josef Stalin. The author continually reiterates the statement that only now is it possible to appreciate fully the historic significance of the Stalin Five-Year Plans for the destiny of the Socialist Revolution. The Five-Year Plans are an embodiment of Stalin's genius that saved the Soviet people and insured their victory over Nazi Germany. Likewise, the author spares no panegyrics emphasizing the rôle played by the Communist party, under the leadership of Stalin, in guiding Soviet economic development. "To the Bolshevik party belongs the honor and glory of a victory unparalleled in the history of man. Unbendable fortitude, unsurpassed mastery in the

guidance of the war economy, and a titanic will to victory mustered all the forces of the people of the USSR to crush the enemy" (p. 10).

Far and away, this report is the most important statement of policy that has come out of the Kremlin since the last Communist Party Congress held in Moscow in March, 1939. Accordingly, it has been proclaimed in the USSR as a basic contribution to the political economy of socialism. Oddly enough, references to Marxism or to the writings of Karl Marx and to Communism are conspicuous by their absence. The dominant theme is centered on "socialism," on "Soviet Russia," and on the "inner strength of the planned economic system," but neither on Communism nor on Marxism.

The author cites facts and figures to focus attention on the economic achievements and great industrial progress made by Soviet Russia in contrast to that of pre-Revolutionary or Czarist Russia. The Soviet Russian oil output on the eve of the Second World War was three and one-half times as great as in Czarist Russia. Prior to the Revolution, Russia did not produce motor vehicles, tractors, aluminum, magnesium, or rubber. Similarly, the output of grain for the market was on the eve of the Second World War nearly twice as great as on the eve of the First World War.

Under the general heading of imports, Voznesensky glosses over the positive contributions made by Lend-Lease from the United States to Soviet Russia in its military struggle against Germany. His contention is that munitions, food, and industrial equipment from abroad aggregated only four per cent of Soviet Russia's own total industrial production. Manifestly, the author seeks to minimize the part played by Lend-Lease in Soviet Russia's victory over Nazi Germany. The moral drawn and repeatedly stated throughout the book is that had it not been for the total industrialization of the national economy and the transformation of the Stalin Five-Year Plans to a war-economy during the ten years prior to the German invasion of Russia, the Soviets would not have been able to offer such formidable resistance to the invaders, and ultimately to defeat the enemy.

Each of the seventeen chapters concludes with a paragraph the first sentence of which always begins with the phrase "Takin Obrazom," i.e., "It follows therefore . . . " Thus the definitive conclusions and categorical statements made at the end of each chapter will of necessity have to be taken in the form of directives to executives, to administrators, to Communist party leaders, and to the professorial group concerning the fundamental principles and "inner strength" of the Soviet socialist economic system and its "proved" advantage over the capitalist economic system. The author continually reiterates the craven Soviet fear of the capitalist countries. "As long as the capitalist encirclement exists, it is of importance to keep the powder dry. As long as imperialism exists, the danger of an at-

tack on the USSR remains; hence the danger of a New Third World War" (p. 190). Repeating the shop-worn *cliché* that the capitalist countries of Europe are in grave danger of being enthralled by American monopolies under the guise of "assistance" (Marshall Plan), the author makes this categorical statement: "The socialist economy of the USSR was and remains independent of the capitalist world and is developing according to its own laws . . . Soviet economic development is based on the state monopoly of foreign trades, arising from socialist ownership of the means of production. These features of the Soviet economy should be borne in mind by all who desire to develop economic relations with the Soviet Union" (p. 166).

The Soviet socialist economic system is not guided by the profit motive, and its laws of value and costs are radically distinguished from those in the capitalist economic system. The Soviet system does not engender those conflicts which inevitably lead to capitalist crises of over-production and depression. Socialist state planning resolves and liquidates the conflicts which arise in the process of development of the Soviet economy between the requirements of the whole Socialist society and the level of production attained. From this line of reasoning, Voznesensky concludes that the possibility of crises and unemployment is precluded in the USSR.

Also, attempts at planning in capitalist countries are not based on any real economic forces, and therefore are doomed in advance to utter failure. Voznesensky takes exception to "the judgments of certain theorists who consider themselves Marxists (presumably Dr. Eugene S. Varga and his associates) on the 'decisive rôle of the state in the wartime economy of capitalist countries' as nonsense and unworthy of consideration" (p 31). In refuting these "so-called Marxists," the author says that in 1944, seventy-five per cent of the total United States government war contracts were awarded to only one hundred leading monopoly-capitalists.

Like many another text on the Soviet political economy, Voznesensky's reports that great progress is being made in concerted efforts to reconstruct and further develop the Soviet economic system. And he concludes his book with the prognostication that the Soviets are definitely moving in the direction, not only of strengthening the Socialist society, "but of surpassing and of overtaking, in the economic sphere, the leading capitalist countries, including the USA."

CHARLES PRINCE.

New York City.

Fallen Sun; A Report on Japan. By NOEL F. BUSCH. (New York: Appleton-Century-Crofts, Inc. 1948. Pp. 258. $2.50.)

From the experience of an undisclosed number of months in occupied Japan, Mr. Busch, a senior writer for *Life*, adds one more book to the growing number of superficial, journalistic accounts of one of the most

significant developments in public administration. The author's warning that it is the duty of correspondents to examine the occupation in detail and to be less concerned with the forest than with the trees (p. 8) appears to be unheeded in his own report on Japan.

It is apparent that in the preparation of this book the most valuable sources of information were untapped. Careful and critical observation of the work of nearly 2,000 military government officials in the forty-six prefectural capitals is essential in the preparation of any reliable analysis of the occupation. Unfortunately, the book under review, in common with similar treatments which preceded it, relies almost exclusively on contacts with SCAP (MacArthur's headquarters in Tokyo), the Dai Iti Hotel (billet for high ranking officials), the Tokyo Press Club, and a variety of friendly Japanese in the Tokyo area. The reader would gather that the only agency concerned with military government is MacArthur's headquarters in Tokyo. This criticism remains valid despite the author's explanation that "Tokyo is by no means the whole of the occupation. . . . The occupation itself consists of approximately 130,000 American and 35,000 British troops which are stationed, mostly in small units, as garrisons all over the four main Japanese home islands" (p. 16). The author fails to distinguish between occupation troops and military government personnel. The former are purely tactical troops with no official contact with the Japanese. The latter are the field-service units of Tokyo headquarters, and are in intimate and constant official contact with Japanese prefectural officials. Contact between SCAP and the Imperial Government is somewhat limited to officials of the ministries, industrialists, and others of national prominence. In contrast, the prefectural military government teams have close contact with all types of people in the hinterland from the tenant-farmer whose efforts to obtain land under the Rural Land Reform Act are investigated to the governor or police commissioner whose activities in local elections are closely watched.

This criticism begs the question: What are the sources which must be tapped in analyzing the occupation of Japan? Perhaps the most valuable source is the work of the small, capable Counter-Intelligence units hidden away in every prefecture. A second source is the work of functional specialists of the prefectural military government teams. These officers are generally capable, and their official contact with the Japanese is intimate. A third source is contact with prefectural governors, mayors of cities (*shi*), chief officials of counties (*gun*), and headmen of towns (*machi*) and villages (*mura*). No account of maturity or validity can be made without access to these sources as a complement to the usual SCAP and Tokyo agencies.

Typical of the inaccuracies which necessarily result from reliance solely on SCAP reports and interpretations is the author's observation that the

Japanese "readily discerned and remembered" that emergency food shipments at the rate of 100,000 tons a month came from the United States (pp. 44–45). Actually one of the central problems of military government at the local level during 1946 was the difficulty of persuading the Japanese not only that they were being saved from starvation by the import of American food, but that their own food shortage was not due to confiscation of native food supplies by the American Army for its own consumption. This reviewer (who was a military government officer for eighteen months in Yamanashi prefecture) found it necessary to conduct an extensive publicity campaign to make the people aware that they were eating food imported from America.

Mr. Busch misses the essence of the genius of the occupation when he says that SCAP is responsible for "*supervising*, i.e., running," Japanese affairs (p. 56). "Supervising" and "running" are hardly synonymous terms, especially in the parlance of military government theory. The genius of the occupation lies in the fact that the American authorities do "supervise," but do not "run," the government of Japan. That is to say, the type of military government in Japan is *supervisory* rather than *operational*. It is this characteristic which distinguishes the administration of Japan from that of Germany and Korea, especially in the initial stages of the two latter countries' occupation. At no level of the Japanese occupation do American officials operate the government, despite the author's observation that "to say that these individuals (SCAP officials) govern Japan is no exaggeration" (p. 56). Not only has the control of Japan never been operational, but the supervision has become less and less stringent as the focus of emphasis has shifted almost imperceptibly from the policy of issuing mandatory directives allowing little exercise of discretion to that of deftly suggesting and guiding the Japanese in a non-mandatory style.

Despite the book's basic orientation with which this reviewer is in essential disagreement, it must be said that the author paints an accurate and highly readable picture of occupation life in Tokyo. His analyses of the functions of the special staff sections of SCAP are dependable if somewhat sketchy. It is regrettable that he did not comment on each of the sections instead of only two or three. His praise of the work done by Lt. Col. Cecil G. Tilton (formerly a professor at the University of Connecticut) and his hard-working Local Government division of General Whitney's Government section is well justified.

It is unfortunate that half of the book is devoted to bits of intimate information about Japanese living habits. If Japanese cultural behavior is now not well known to interested readers, a wealth of reliable information in entertaining style has been made available by such cultural anthropologists as Professors Ruth Benedict, Douglas Haring, Frederick Hulse, John Embree, and others. Mr. Busch's eighty-eight pages on "The

Japanese" and his twenty-five pages on "Peach Blossom, the Tokyo Geisha Girl," although very entertaining, add nothing to our knowledge of Japanese behavior.

It is difficult for this reviewer to follow the author's warning that dispatches on the occupation which "imply or suggest that things are not, in general, going extremely well, . . . may even, in a peculiar way, be positively dangerous" (p. 9). There is more likely to be real danger in any report which does not reflect exhaustion of source materials, intimate knowledge of Japanese culture, extended residence among Japanese in rural and urban areas, and the orientation of the trained political scientist.

RALPH J. D. BRAIBANTI.

Syracuse University.

The Allied Military Government of Germany. By W. FRIEDMANN. (London: Stevens and Sons. 1947. Pp. x, 362. 25s.)

This book has been badly needed for some time, but few people could have written it. The author, a former British Military Government officer, who operated in Germany and also had a German background, was thus equipped both by training and experience to analyze in a critical way the main functions and problems of military government. This he has done in an admirable way, and more comprehensively and realistically than would have been possible for anyone except an insider.

His book contains in an appendix about a hundred pages of useful official documents, some of which have already appeared in publications in the United States, but not in Britain. The documentation throughout the book is good, and the judgments expressed are on the whole very fair. Perhaps the most valuable chapters are those which deal with the economic and constitutional problems and with German reactions to Military Government. The discussions of socialization as a policy problem, and of denazification, are also noteworthy. But it would be unfair to single out portions of the book for praise without making it clear that the whole study is of a high order and deserving of the most careful and thoughtful reading.

As the author says, "it is impossible to do full justice to the manifold activities and problems of Military Government." But in a very large measure Dr. Friedmann has been objective in his criticism and has covered all four zones of occupation, concentrating on the most acute and critical aspects.

He does not hesitate to criticise and evaluate the programs and accomplishments of all occupying powers, being particularly strong in his strictures on British Military Government for its failure to push a program of socialization. Clearly there is room for disagreement here, and one might

also point out that British failures were principally failures of administration rather than of policy. In this respect, Dr. Friedmann glosses over the administrative maze which the British created in their zone, and fails to draw the proper conclusions from his own statements about the inflated size of British Military Government personnel, even though he does refer to the British Control Commission as "a formidable legacy."

The reviewer feels that Dr. Friedmann is quite inadequate and wrong in his understanding and evaluation of the Laenderrat in the American zone; that he gives too rosy a picture of German admiration for British methods and accomplishments, including their anemic Zonal Advisory Council and their slowness in turning over responsibility to the Germans; that in a little footnote on page 81 he betrays his complete misunderstanding of relative German progress in the American and British zones; and that he misstates the American position when he writes that "the United States has pressed for a loose federal pattern." He has also failed to include any adequate treatment of the serious expellee problem—the only significant omission in the book.

But no one can reasonably expect a better over-all analysis of Germany under occupation than Dr. Friedmann has given us. If he had operated at a higher level, he would have understood the good and sufficient reasons for many of the decisions which the military governors had to take. Nevertheless, his book is a real contribution to our understanding of the current as well as the future German problem, and should be studied most carefully by every student of Germany.

JAMES K. POLLOCK.

University of Michigan.

President Roosevelt and the Coming of the War, 1941; A Study in Appearances and Realities. By CHARLES A. BEARD. (New Haven: Yale University Press. 1948. Pp. vi, 614. $5.00.)

This book is a sequel to Dr. Beard's *American Foreign Policy in the Making, 1932–1940.* Its thesis is found on page 484, where the author states that his inquiry is particularly concerned with two questions: "(1) How did the secret actions of the Roosevelt Administration bearing on relations with Japan from August 17 to December 7, 1941, as described in official documents now available, square with official representations of the Administration to the American people at the time—realities with appearances? (2) Do these official documents sustain the official thesis respecting relations with Japan presented to Congress and the people by President Roosevelt's message to Congress on December 8, 1941?"

Briefly, Dr. Beard's conclusion is that as early as October 8, 1940, while he was making campaign peace pledges to the country, President Roose-

velt felt convinced "that Japan would make a mistake and the United States would enter a war in the Pacific." Furthermore, Dr. Beard accuses the President and his war cabinet of conducting affairs in relation to Japan—at least from the Atlantic Conference to December 7, 1941—according to a policy of no compromise, with the object of maneuvering the Japanese into firing the first shot. Dr. Beard attempts to support his charges with quotations from the records of the congressional committee on Pearl Harbor, the debates in Congress, the *Diary* of Secretary Stimson, the *Public Papers and Addresses* of President Roosevelt, and other sources.

Other authorities do not agree with Dr. Beard that the Roosevelt Administration maneuvered the Japanese into the position of firing the first shot. Secretary Stimson, in his book, *On Active Service in Peace and War*, states that the line of policy suggested by him and others was predicated on the assumption that the Japanese "would have the good sense not to get involved in war with the United States" (p. 385), and adds that the line of policy of President Roosevelt and Secretary Hull was based on the importance of avoiding such a war. Particularly does Mr. Stimson say that "much of the discussion of Pearl Harbor was confused and embittered by a preposterous effort to demonstrate that President Roosevelt and his advisers had for some unfathomable, but nefarious, reason 'planned it that way'. . . . The twisted and malicious views of the minority report he [Stimson] considered sufficiently answered by the majority" (pp. 392-393).

Samuel Flagg Bemis, in *A Diplomatic History of the United States* (revised edition, 1942), asserts that a "general Japanese-American diplomatic settlement became extremely difficult when, by signing the Triple Alliance [September 27, 1940], Japan stepped from the back yard of American diplomacy to take a place in the front yard also" (p. 869). He also says that throughout 1941 Secretary Hull "strove to work out with Japan some broad-gauged program of peace for the entire Pacific area" (p. 871). Likewise, Thomas A. Bailey, in his *Diplomatic History of the American People* (2nd edition, 1944), referring to Kurusu's trip to Washington, declares that in the circumstances there was little hope for peace. "The brutal fact is," he asserts, "that the United States was already at war with Germany" (p. 793). So, too, Walter Millis, in *This is Pearl Harbor*, after an examination of the same official documents used by Dr. Beard, writes that not only does the record offer no support for the view that the Roosevelt Administration plotted to invite a Pacific war, but that on the contrary it tried to stave off war as long as possible. He admits, however, that "President Roosevelt and his advisers followed policies which, under all the circumstances, made the Japanese attack virtually inevitable" (p. xi).

In his concluding pages, Dr. Beard is severely critical of the interna-

tional trend in our foreign policy and of the greatly augmented authority of the President in the shaping of that policy. In this he professes to see a grave danger "with no divinity hedging our Republic against Caesar" (p. 598). While it is undoubtedly true, as Professor Corwin has remarked, that "the history of the Presidency is a history of aggrandizement," one may be pardoned for declining to accept either Dr. Beard's severe castigation of President Roosevelt in particular or his pessimistic view of the outlook in foreign affairs in general. It may also be added that the definitive story of events leading up to Pearl Harbor has yet to be written. Certainly it is not found in Professor Beard's controversial volume.

EVERETT S. BROWN

University of Michigan.

American Diplomacy in the International Community. By MALBONE W. GRAHAM. (Baltimore: The Johns Hopkins Press. 1948. Pp. xvii, 279. $3.25.)

Finding fault and holding it up to review, albeit in retrospect, have long been characteristic of Americans. Monday morning quarterbacks are as familiar to us as Saturday's football game. And this same attitude has been reflected time and again in dealing with American foreign policy and American diplomacy. Everyone, from the politician to the general public, assumes the cloak of the expert in the field, and, taking heavy-handed thrusts, finds that "our policy is foreign only to us"; or better yet, playing on Voltaire's famous remark about the Holy Roman Empire, finds it to be neither American nor foreign nor even a policy. In fact, the more vocal they become, the more convinced are they as to the validity of their fault-finding. Perhaps it can be said in extenuation that "the best test of truth is the power of the thought to get itself accepted in the competition of the market"; but truth without fact is at best precarious.

What Professor Graham has done, and done well, should go a long way toward giving all of us the necessary facts on which to interpret and understand American beliefs, traditions, and ideologies that have been, and still are, involved in the formation of at least one aspect of American diplomacy. As his title indicates, he is not covering the entire field of diplomacy in which the United States has been involved, but limits himself essentially and expertly to that phase as found "and exerted on the institutions of the International Community from the beginning of American Independence down to the close of World War II." And at a time when all of us are, or at least should be, vitally interested in a workable and efficient Community of Nations, his work fills a long-standing void. If nothing else (but there is plenty more), we owe a debt to Professor Graham for pointing out that we today are not novices embarking on a crusade or mission to find a solution for peace and security via the United Nations. Rather, our history is full of our attempts, directly and indirectly,

singly or collectively, to achieve some such goal. In fact, if dates could be put aside for the moment, his story, for such it really is, is as contemporary as the morning news. The United States was then as now "against aggression;" it was then as now in "opposition to the extension . . . of a System to the world;" and then as now it had "that sense of solidarity with free men everywhere." Even the geographic areas of conflict ring a familiar note as Professor Graham takes us through the diplomatic relations involved in Latin America, the Greek movement for independence, the crisis in Hungary, the Polish insurrection, the quest for European unity and federation. And in tuning us in on the activities of men and our past Congresses, only the names are heavy with history of the past, for the arguments, criticisms, fears, and prejudices might have been taken verbatim from the Congressional debates of the Eightieth Congress. True it is that then as now we have pushed consistency far beyond the breaking point; but goals as monumental as these cannot be achieved in a vacuum, being rather pushed by other pressures which, in their own way, cannot be ignored by those charged with responsibility for producing results.

Speaking at The Hague on May 8, 1948, on the topic of European unity and European union, Mr. Churchill said in part: "I was anxious at first lest the United States of American should view with hostility the idea of a United States of Europe. But I rejoice that the great Republic, in its era of world leadership, has risen far above such moods. We must all be thankful . . . that the nation called to the summit of the world . . . has not been found lacking in those qualities of greatness and nobility upon which the record of famous states depends. Far from resenting the creation of United Europe, the American people welcomed and ardently sustained the resurrection of what was called the Old World now found in full partnership with the new." Mr. Churchill's eloquence and sincerity cannot, of course, be disputed; but had he been in possession of Professor Graham's lectures (the Albert Shaw Lectures in Diplomatic History), his emphasis might have been different. For peace and security, the safeguarding of the rights of man, democracy, and action toward an international community have been, as so well demonstrated by Professor Graham, ideals toward which our diplomacy has striven, and which our generation may achieve.

BENJAMIN M. ZIEGLER.

Amherst College.

Peace or Power. By SIR HAROLD BUTLER. (London: Faber and Faber, Ltd. 1948. Pp. 269. $4.50.)

In these days when people watch the tug and pull of forces which tend to unite nations and those which keep the world divided, Sir Harold But-

ler presents a short volume that should help to clarify a lot of muddled thinking. In twelve readable chapters, he surveys and comments upon the history of recent times. To the all-absorbing question of whether men can substitute a world of peace for a world of power, the author offers the answer that the East will need much time to make important changes and that the West, especially the Anglo-Saxons, will need faith and a crusading spirit comparable to that which wins wars, under the indispensable leadership of men with daring and vision.

Americans, especially those who cling to the attitude that they are in the world but not of it, will find much in this book to acquaint them with the facts of international life. From his long and intimate knowledge of the people and the politics of European states, refreshed by a visit in 1946, Sir Harold presents an effective analysis and clear understanding of the events which preceded World War II, and he makes a judicious assessment of the political and economic conditions existing in that unhappy continent up to the time of Secretary Marshall's European recovery proposal in June, 1947.

The author first reviews the dark years between wars—the peace that failed, although the Soviet Union tried three times to enlist the Western Powers in a program of collective security. He comments that if France and Great Britain had then unreservedly admitted Russia into partnership, "history might well have taken a different and happier course." Next he describes World War II as a practical demonstration of how the world is ruled by power, and follows with a rough survey of shattered western Europe, Austria, and the six nations of eastern Europe. In his analysis of Germany's almost hopeless situation, the author urges the need of a great psychological change, a federal system of government, economic centralization, and allied occupation for at least twenty years; but until the German question is fully settled, peace hangs in the balance. There are also good chapters on the staggering price that Britain paid for victory; the need of a common voice in the British Commonwealth of Nations; the effects of the Russian sweep into Europe, with "little probability of war;" and the American impact on Europe and Asia resulting from Communist ideology and new United States policy.

The crisis produced by the collision of East and West is referred to as "the most fateful issue which is now agitating the world." The fact that the Russians have for four centuries been divorced from European political, cultural, and religious evolution "is a greater source of estrangement than any difference of ideology." Not Marxist doctrines, but the Russian psychology, Sir Harold diagnoses as the big obstacle to unity in the United Nations; and he suggests that the only way to bridge the wide gulf between East and West is for all "Easterners" to learn in due time that the arbitrary and irresponsible exercise of power by government must be

outlawed from national and international life. When the rights of twentieth-century man and the supremacy of law are everywhere exalted and honored, peace will follow as a matter of course.

JACOB VAN DER ZEE.

State University of Iowa.

German Realities; A Guide to the Future Peace of Europe. BY GUSTAV STOLPER. (New York: Reynal and Hitchcock. 1948. Pp. 338. $3.75.)

Mr. Stolper was a leading German economist who, after Hitler's rise to power, came to the United States, where he published several stimulating books and articles. In February, 1947, he accompanied Herbert Hoover as economic expert on his mission to Germany. There he began writing the present book, which was finished in America at the end of 1947, a few weeks before the author's death. Its purpose is to give honest and expert answers to some of the most widely discussed questions of today. Though readers may disagree with Mr. Stolper—and the present reviewer does so, especially in his analysis of pre-Hitler Germany—they will be grateful for an always thoughtful book which will help to dispel some basic misconceptions and to guide the American public to some of the realities of the situation we face. Thus Mr. Stolper's work should be highly recommended to political scientists and economists concerned with contemporary world problems.

The book consists of two parts. The first, "Stock-taking," presents a picture of Germany today. It is possible that the author overstates the lasting consequences of the disaster which has overcome Germany through her own fault: a nation irremediably maimed in biological structure, intellectually crippled by despotism and isolation from intercourse with the outside world, an industrialized nation with its cities in ruins, with its social fabric destroyed by compulsory mass migration, with its transport and currency on a more than shaky basis. This situation, in Mr. Stolper's opinion, removes the possibility for any foreseeable future of Germany's becoming a threat to the peace of Europe—especially if the prescription of the third Hoover report on Germany is followed that the Germans be allowed no army, no navy, and no air force, retaining only a constabulary in which no Nazi or previous army officer may be employed.

Of highest interest are the pages which Mr. Stolper devotes to "the myth that Hitler was merely a stooge of monopoly and finance capitalism." Only in September, 1932, when Hitler was already the absolute head of the largest party in Germany, was he invited to address a regular meeting of the leading industrialist club of Germany. At this Düsseldorf meeting, Hitler spoke at length, as was his habit. "His audience, bored with the length and emptiness of his speech, was astonished at his confused mind and generally relieved at the harmlessness of a revolutionary figure with such small intellect. Only the nationalistic tirade with which

Hitler as usual concluded his long speech brought him some applause." Later, German industry and finance became wheels and cogs in the state machinery, as little responsible for Hitler's policies as are the directors of Russian trusts for Stalin's acts. "Once seized by the immensely complex and refined clockwork of a despotic totalitarian system, no margin for free decision was left. The individual, however highly placed, had become irrelevant. He would disappear and no one would know the reason or circumstance."

The second part of the book, "Peace-making," discusses the weakness and confusion of the situation after victory. The victors possessed no common vision of the world to be built. "This lack of community of convictions and ideas was the basic factor in inter-allied relations from the very beginning, pardonably ignored as long as there was a common enemy to destroy, unpardonably ignored when there was a new international order to direct." In the foreseeable future, Mr. Stolper believes, peace cannot be made for Germany as a whole. Western Germany, without sufficient agricultural land, will have to sustain a population much larger than before 1939, and the rehabilitation of Western Germany will take a much longer time than that of Europe west of the Rhine.

The German realities will occupy the Western world for a long time to come. "Some form of military occupation will have to be kept there as far ahead as we can see, long after the Military Administration has ended," Mr. Stolper concludes. "Washington and London will have to bend every effort to bring about a sincere conciliation between Germany and France. Without that, all attempts at political and economic integration of Western Europe would be futile." The very fact that Germany presents such a long-term problem, closely tied up with the peace of all Europe, insures Mr. Stolper's last book a more than transitory place on our shelves.

HANS KOHN.

Smith College.

The Hidden Weapon; The Story of Economic Warfare. By DAVID L. GORDON AND ROYDEN J. DANGERFIELD. (New York: Harper and Brothers. 1947. Pp. xii, 238. $3.50.)

While three dimensions of the recent conflict—the war on land, sea, and in the air—have already been the subject of dozens of memoirs, diaries, and histories, publications on a fourth dimension, economic warfare, are only beginning to appear. The authors of this concise yet fascinating study are particularly well qualified to describe the techniques of economic warfare, for both of them are former chiefs of the Foreign Economic Administration's blockade division, in whose hands lay responsibility for the prosecution of this new kind of war. They have produced a work which is authoritative enough to aid the serious student, yet sufficiently readable to interest the general public.

The purpose of Allied economic warfare was to strangle the Axis by denying it the resources required to wage a modern war. The cornerstone of this warfare was the age-old practice of the blockade. But primarily because the neutrals of Europe were able to continue trading with the enemy, a simple blockade was not enough, and the Allies were forced to devise new techniques to cut off Axis supplies. These practices included preclusive buying, the safehaven program, black lists, and a variety of other economic pressures. The result was a different kind of struggle, in which the traditional rights of neutrals all but disappeared.

By way of introduction, Gordon and Dangerfield discuss the early British blockade measures and the development of the Anglo-American partnership, in which the Board of Economic Warfare and its successor, the Foreign Economic Administration, played an increasingly important rôle. However, this volume concentrates primarily on the struggle which took place with respect to the five European neutrals. The authors describe the successful campaign to decrease Sweden's aid to Germany, in which SKF ball-bearings were the most strategic commodity. They portray the less successful efforts to cut the financial ties between Switzerland and the enemy and to prevent Swiss precision instruments from being exported to Germany. They discuss in detail the use of preclusive buying in Portugal and Spain to keep wolfram and other key minerals from reaching Axis countries, and they describe similar efforts to prevent Turkish chrome from being sent to the enemy. In addition, the authors analyze the difficulties of close Anglo-American coöperation and the influence of political policy on economic warfare.

In evaluating the success of Allied economic warfare, Gordon and Dangerfield frankly recognize that the effort failed to bring about the collapse of the Axis. As an auxiliary operation, however, they point out that economic warfare accentuated enemy shortages, created a general strain on the German economic structure, diverted manpower eventually needed in the armed forces, and forced a reduction of Axis production goals. In conclusion, the authors suggest that the techniques developed in this field during the war may possibly serve the United Nations if it is ever required to exercise economic sanctions.

FRED L. HADSEL.

George Washington University.

The Year Book of World Affairs, 1947. EDITED BY GEORGE W. KEETON AND GEORG SCHWARZENBERGER. Published under the auspices of the London Institute of World Affairs. (London: Stevens and Sons, Ltd. 1947. Pp. vii, 344. 20s.)

This year-book is a newcomer to the field of publications on world affairs. It will not supplant other more complete annual commentaries,

nor those which give a full chronology of international relations. For it is designed primarily to offer additional information on current problems beyond that which the London Institute of World affairs provides in its book series, "The Library of World Affairs," and in the quarterly periodical, *World Affairs*. In addition to extensive book reviews, a dozen articles are published in this first issue. The editors explain that these studies required fuller exposition than was possible in the Institute's quarterly, but did not merit book-length treatment.

The first two articles deal chiefly with Russia—one by Dr. W. Gurian, managing editor of *The Review of Politics*, on "Permanent Features of Soviet Foreign Policy;" and the other on "Western and Soviet Democracy," by R. Schlesinger. Dr. Gurian argues that Soviet foreign policy, from Lenin's time forward, has been utopian in aim, but cynically realistic in practice. "The very belief in the world-revolutionary utopia, in the ultimately inevitable victory of Communism, justified careful adaptation to existing realities, that is to say, power politics." Soviet policy abroad has always "taken into account existing power conditions." For this reason, Dr. Gurian concludes that "energetic resistance" from the outside will deter Russia from further expansion. Schlesinger, while not directly concerned with Soviet foreign policy, believes that Western democracy is compatible with the Soviet régime if a new equilibrium of power is established in the world. To this reviewer, however, that conclusion appears merely tacked on to Schlesinger's essay. The author does make one very sound contribution to the discussion of the two concepts of democracy noted in his title. (Whether the fact of two different types of democracy is sufficiently established is another question.) He points up the utter impossibility of comparing political institutions in Russia with those which have evolved in Britain or the United States. Only in the underlying social conditions, Schlesinger contends, can common standards for comparing democracy in Russia and the West be found.

Four more articles with a definite geographic setting follow. That by A. G. Bettany, "Czechoslovakia Between East and West," is definitely outdated by the recent Communist seizure of power and the events which have followed, including the resignation of President Eduard Beneš. Written by a journalist who conveys an on-the-spot flavor, Czechoslovakia is throughout pictured as a bridge between East and West. Graham H. Stuart, in "The Problem of Tangier," has surveyed the recent developments concerning that supposedly international city. In the author's view, however, drastic changes are needed if the Tangier zone is to become truly international. Two articles of interest to students of the Far East are Rev. C. S. Milford's, "The Communal Problem in India," and G. W. Keeton's "Nationalism in Eastern Asia." Rev. Milford, formerly lecturer at Calcutta University, gives but a brief historical sketch of the

emergence of the partition movement in India; his comments on the position of other communities in India—especially the Christians and Scheduled Castes—are well worth reading. Professor Keeton, lecturer in English law at the University of London, covers virtually the entire Asian continent in his article; hence the treatment is extremely broad. His generalizations appear well taken, however. He emphasizes the lasting impact of Japanese occupation on the mainland of Asia, and notes that the most general and striking feature of recent Asian developments is the rapid rise of left-wing parties. Due to increasing pressure on the land because of population growth, financial aid and expert guidance will, Keeton believes, be required from the West for the growing nations in the Far East.

The last six contributions to the year-book show its further broad scope. Topics covered range from a restatement of the function of international law to articles touching on world economic, cultural, and scientific relations. A realistic approach to his subject leads G. Schwarzenberger, in "International Law and Society," to admit that international law, based on the concept of national sovereignty, is a law of power, but he insists that international law is a law of reciprocity as well, and also shows "traces of the law of coördination." In "The Future of International Economic Institutions," A. G. B. Fisher, of the Royal Institute of International Affairs, London, cautiously suggests that what is needed is not other more ambitious institutions, but the delegation of authority to those now in existence, so that each organization may initiate a review of various national economic policies and propose changes which might forestall conflicts among different economies.

The year-book closes with the following articles: "UNESCO," by Maxwell Garnett; "The World Church," by Rev. A. M. Chirgwin; "The International Red Cross," by Dr. L. Ledermann; and "The Peace-Time Application of Atomic Energy," by H. S. W. Massey. The discussion of the Red Cross offers a most interesting survey of the very broad activities of that organization; and the article on the World Church may be singled out since so little is available on the subject in the more familiar publications on international affairs.

GRANT S. MCCLELLAN.

Foreign Policy Association.

The British Year Book of International Law, 1946. EDITED BY H. LAUTERPACHT. (London: Oxford University Press. 1947. Pp. vii. 535.)

Long recognized as one of the leading periodicals on international law, the Year Book has now been expanded to include the field of international organization. Its usefulness for the student of general international relations has been measurably increased.

Professor Lauterpacht, editor of the 1946 number, contributes the leading article on "The Grotian Tradition in International Law." He believes that by examining the Grotian tradition one may obtain an insight into the persistent problems of international law of the past, present, and future.

There are three timely articles on the United Nations. The first, by an expert who chooses to call himself "Pollux," deals with "The Interpretation of the Charter of the United Nations." "Pollux" surmises that interpretation of the Charter, as of any constitutional instrument, will have increasing importance as time passes. But he thinks that numerous difficulties must be faced. The Charter is a highly political agreement, it is multilateral, it has faults in its drafting, and its five languages tend to make interpretation even more difficult. Moreover, it does not indicate adequately how and by whom interpretations are to be made and what binding effect they shall have. Furthermore, the author warns that no state is likely to accept an interpretation which it considers wrong, regardless of the size of the majority which may favor it.

Professor Brierly contributes an article on "The Covenant and the Charter" in which it is concluded that an organization has been created which can neither decide nor act. Professor Whortley, of the University of Manchester, analyzes "The Veto and the Security Provisions of the Charter." Among the conclusions at which he arrives is the view that if a permanent member commits an act of aggression in which the veto renders Council action impossible, action may still be possible under ordinary international law; furthermore, that there is nothing to prevent members that wish to do so entering into treaties designed to limit the right of veto otherwise exercisable by them, so long as the treaty is consistent with the purposes of the United Nations.

An article on "Government in Commission," by R. Y. Jennings, discusses the juridical basis of the occupation and government of Germany by the four Powers. A. H. Robertson writes on "Some Legal Problems of the UNRRA." In "Crimes Against Humanity," Egon Schwelb traces the growth of conception of a crime against humanity, with emphasis on the Nuremberg trials. He feels that so many restrictions were laid down in the Nuremberg procedure that the "task of making the protection of human rights general, permanent, and effective still lies ahead." Professor Herbert A. Smith touches upon an almost unwritten phase of international law in an article on "Booty in War," noting some of the decisions made during the recent war. Other articles deal with Foreign Office certification of recognition, and with Italian prize law.

American students will find two of the fourteen shorter notes of especial interest. Mr. M. E. Bathurst examines the "Jurisdiction of a Country over Friendly Armed Forces" in its midst, with particular reference to

American forces in British territories. Mr. F. A. Vallat's note on "The Continental Shelf" points out that the present status of international law which regards the sea-bed and subsoil beyond territorial waters as *res nullius* invites a new era of "rush and grab." He inclines to the view that the United States proclamation of September 28, 1945, established a useful lead, and that the doctrine of jurisdiction in the continental shelf is reasonable and just, where it can be applied. Attention is called, however, to problems bound to arise in narrow gulfs or bays where several states border on an important area. In such instances, including the Persian Gulf, agreements will be needed, for which he cites as precedent a British-Venezuelan agreement of February 26, 1942, on division of jurisdiction on the Gulf of Paria.

The *Year Book* has a useful section on "English Decisions on Public and Private International Law Since 1945," an annotated documentary section on the constitutions of international organizations prepared by Mr. Clive Parry, and the usual reviews of books.

NORMAN J. PADELFORD.

Massachusetts Institute of Technology.

Psychological Warfare. BY PAUL M. A. LINEBARGER. (Washington: Infantry Journal Press. 1948. Pp xiii, 259. $3.50.)

Wartime propaganda, a subject which captivated writers after the First World War, has thus far after the Second been accorded relatively little attention. Major Linebarger's first-hand report of propaganda activities during the recent conflict is therefore especially welcome. The author is well qualified for his task; he was a member of the Psychological Warfare Division of the U. S. Army, and for years was an observer of psychological warfare between Chinese Nationalists and Communists.

Dr. Linebarger writes that he has tried to make the book a "patchwork of enthusiastic recollections," and he has succeeded. The reader is given on-the-scene accounts of psychological warfare in application and enlivening illustrations of propaganda material used during World War II. The book is divided into three parts. The first section includes chapters on definition, function, and historical development of psychological warfare. The second part deals with propaganda analysis and intelligence; the third, with planning and operations. Throughout, technical aspects are reduced to a minimum and complexities of analysis are avoided.

Concerning an otherwise excellent study, two criticisms stand out. First, the author fails to define his subject carefully. Although the discussion is largely concerned with psychological warfare as an adjunct of military operations, the frame of reference is often expanded to include economic

and political warfare "psychologically waged." Secondly, the author occasionally permits value judgments to color his presentation of facts. For example, in his analysis of Soviet propaganda methods, Dr. Linebarger writes: "The Communists, not really being a political party anywhere, but using the name "party" to designate the hierarchy of a dogmatic, ruthless, and fanatical political religion . . . "

In his analysis of propaganda, the author avoids the complex, though systematic, treatment which characterizes Lasswell's and Doob's approach to the subject. Instead, Dr. Linebarger offers a simple formula by which propaganda may be described, namely, "STASM." According to this formula, propaganda may be analyzed in terms of *S*ource (overt and covert), *T*ime (strategic and tactical), *A*udience (direct and indirect, intended and unintended), *S*ubject (content), and *M*ission (for whom and for what purpose). As a check list for the propagandist, this formula should prove a valuable aid in planning a propaganda campaign; though less useful for the propaganda analyst, it does offer a convenient classification by which various aspects of propaganda may be examined and compared.

Dr. Linebarger appropriately emphasizes the need for planning psychological warfare during the pre-belligerent stage as well as during the period of hostilities. In the absence of outright belligerency, however, such planning cannot be done unless psychological warfare is an acknowledged instrument of national policy. The success of psychological warfare would then depend upon the effectiveness with which political instruction to propaganda specialists, military and civilian, could be enforced. Monitoring domestic as well as foreign newscasts is an activity common to the major powers. Accordingly, a general plan must include the domestic scene and must reckon with the traditional structure of America's mass communication system. Dr. Linebarger is apparently aware of some of the difficulties involved in planned psychological warfare when national policy is the pursuit of peace, for he advocates Congressional and judicial action to prevent "malicious and wanton libel of foreign peoples, leaders, and governments."

Psychological Warfare illuminates one phase of our wartime activity which has heretofore seen little light. Its foray into the field of propaganda as an instrument of national policy suggests the urgent need for more intensive study of the dilemma which faces a democratic state in meeting the propaganda of other powers at home and abroad: How can the demands for political direction of communication media be reconciled with the democratic right to freedom of expression?

MARTIN KRIESBERG.

University of Michigan.

Civilization on Trial. By Arnold J. Toynbee. (New York: Oxford University Press. 1948. Pp. vii, 263. $3.50.)

In his new book, Toynbee has turned from a study of history to an inquiry into the future. While borrowing many theories from his *Study of History*, he refers to past events mainly to predict coming developments. That is the central theme of this collection of thirteen essays (ten of which have appeared previously in various magazines, all but three in 1947).

Toynbee predicts that our secular Western Civilization, although headed for destruction, will first bring about the political and cultural unification of mankind. Unlike our own materialistic culture, the coming world-embracing civilization will be essentially religious. As to the character of this future universal religion, the author makes contradictory predictions. It will combine equally elements of all creeds now surviving. Yet "Christianity may be left as the spiritual heir of all the other higher religions" (p. 240).

Most of Toynbee's predictions profess to be scientific in the sense that they are ostensibly deduced from empirical laws. Thus from the alleged law that the survival of any civilization depends on its "*intrinsic worth*" (p. 158), and the statement: " . . . our own Western post-Christian secular civilization . . . [is] a *pernicious back-sliding* from the path of spiritual progress" (p. 236), Toynbee derives the prediction that our civilization will perish. Similarly, his prediction that the existing religions will be superseded by a *higher religion* is implied by the law that "in contrast to the cyclic movement of the rise and fall of civilizations—the history of religion on earth is a movement in a single continuous *upward line*" (p. 244). All these statements include value terms (italicized by the reviewer) and thus involve value judgments. Such judgments are necessarily relative to the author's own ethical and religious beliefs, and incapable of being empirically tested.

Toynbee himself judges the worth of a civilization by the importance it gives to spiritual as compared with material values, and the level of a religion by its similarity to Christianity. Substituting these standards for his own value terms, we are able to rephrase his own formulation of some of his arguments without including value judgments. For example: (1) the survival or decline of any civilization depends on whether it is predominantly spiritual or secular; (2) our civilization is of the latter type; (3) hence, it is doomed. The two premises of this prediction (unlike those of the version given above) can be empirically tested. The first one, however, is contradicted by historical evidence: the Greek civilization evidently declined when it turned from this-worldliness to other-worldliness. Similar objections have been raised against *A Study of History* and apply to other generalizations in the author's present volume. Thus Toynbee

contends that all encounters between civilizations give rise to new, and higher, religions; yet no new religion emerged from the encounter of the Spanish and Aztec cultures. Again, according to Toynbee, prophets and saints have been the great benefactors of humanity, scientists definitely not.

It is apparent that Toybnee himself is not satisfied with the empirical foundation of his predictions; he adds (more explicitly than in *A Study of History*) a theological one. If a purified form of Christianity eventually triumphs over materialism, this will be due to "some purposeful enterprise" of a personal God (p. 15). Like Saint Augustine and Hegel, Toynbee visualizes history as "the masterful and progressive execution . . . of a divine plan" (p. 14). There can be no objection to writing what the author himself calls a "mythology" (p. 11), especially if it is as brilliantly written as is the present one. What does call for criticism is Toynbee's paradoxical endeavor to provide an empirical foundation for his attack upon empiricism, and his fruitless attempt to build a scientific defense for his metaphysical vision.

FELIX OPPENHEIM.

University of Delaware.

Democracy and Progress. By DAVID MCCORD WRIGHT. (New York: The Macmillan Company. 1948. Pp. xvii, 220. $3.50.)

This is an interesting and modern defense of capitalism as the best guarantee of political democracy. The only trouble is that capitalism is so curried and caparisoned as to appear a horse of a very different color from the old steed so often subjected to vigorous lashings by its critics. The element of risk is to be retained, together with the possibility of profits at least proportional to risk. But the horse is not to be allowed to run away, as he has done so many times under the roweling of "free competition." Monopoly is not to be permitted. When a depression appears imminent, the government must step in. "The combination of social security, unemployment benefits, and judiciously distributed public works will give a degree of stability and security never before approximated" (p. 190).

To the political scientist, the first five chapters of the book are the most interesting. Here the author develops, among others, the ideas that "economic competition is on balance the best general approach for a democratic culture" (p. 45); that "special factors exist which make scientific progress particularly easy under capitalism" (p. 2); and that "the philosophy of democracy carried to extreme and the effects of eighteenth-century philosophy, and subsequent scientific influences, have very nearly destroyed values, including the basic values of democracy itself" (p. 67). Again: "By an ideological reconstruction of capitalism that would

show its connection with democracy and science and thus obtain the removal of many of the fetters now binding the system, and by limiting inflation and unemployment, the way would once more be open to a wider freedom and a renewed achievement" (p. 193). If this be capitalism, make the most of it.

Throughout the book there is an *ex cathedra* intonation, and a shortage of anything that could be called evidence. In fact, there is a tendency to overlook evidence. To omit consideration of the momentous undertaking of Great Britain, the increasing socialization of the economy combined with the preservation of political liberties, certainly weakens the author's contention that "democratic political freedom is closely tied up with the decentralization, alternative work opportunities, and limited control of the competitive economic market" (p. 198). The great number of ways in which our own federal government intervenes continually in the economic realm—the Federal Reserve System, the regulation of interstate carriers, and the work of the Federal Trade Commission, to name but a few—should logically have been examined and accepted, rejected, or subjected to constructive criticism before the author's fiat went forth. It is only fair to say that the capitalist system is not shown as perfect, or even as self-adjusting. "Inability or unwillingness of the capitalist world to adapt itself may well destroy the system" (p. 214).

This review necessarily omits many interesting and stimulating ideas developed in the book. Although much of the volume's substance seems to the reviewer dubious, and its method of pronouncement without demonstration is far from scientific, it is eminently readable. Moreover, it provokes thought. In reading it, one writes innumerable marginal comments beside statements which it would be a pleasure to debate with the author.

MIRIAM E. OATMAN.

Washington, D. C.

Les Transformations de la Responsabilité: Étude sur la Penseé Juridique. By LÉON HUSSON. (Paris: Presses Universitaires de France. 1947. Pp. viii, 544.)

Twentieth-century jurisprudence has seen many attempts to formulate theories which could account for both the *what is* and the *what ought to be*. In this respect, Professor Husson's volume is not new. Although the approach that he uses likewise is not an innovation, it is of interest. It consists of an analysis of the intellectual activity of the French jurisconsults of the present epoch as to a particular aspect of law: the problem of the civil responsibility of an automobile driver for injury to passengers and guests in his own car.

The traditional approach of French jurists, in adhering to the theory of legislative supremacy, has been to advocate a strict adhesion to the letter of the statute law. Professor Husson draws heavily from more recent French jurisprudence, especially the doctrines of Francois Gény, in his finding that the statutes do not include the whole positive law. Husson shows that in the very process of applying the law, the judges have actually modified or even created it. This has been inevitable since in their time the makers of the code could not possibly have foreseen the problems resulting from the invention of the automobile. Thus while the letter of the code would logically include the subject in question, the spirit of it could not. Hence, the legal definitions found in the code, he concludes, cannot be mathematical postulates sufficient unto themselves; rather they are categories of real situations which are inevitably relative to the experience of those who formulated them and which can be applied to future conditions only if reinterpreted in the light of those conditions.

Consequently, the criterion for the judge in applying the code is that of juristic experience, of the testing of the means adopted to determine whether they actually accomplish the basic ends in view. The discovery of these ends and the interrelationships between the positive laws, the ideal law, and natural law are further aspects that he discusses. Again his examination is refreshingly realistic, since no attempt is made to pretend that positive laws are reflections of natural law. He defines natural law as nothing more than a group of directives which govern the elaboration of positive laws. These directives take form only by being embodied in prescriptions which are relative to the circumstances of their application. Furthermore, the formulation of these prescriptions is left to human intelligence, with all the risks of error which that implies.

Professor Husson's conclusions add little to those of his predecessors. Yet it is interesting that he, as a philosopher, directs the attention of his colleagues to a study of the positive law as a means of clarifying their philosophical difficulties in reconciling the normative and positive sciences.

R. M. Campbell.

University of California (Los Angeles).

A Centenary of Marxism. By Samuel Bernstein *et al.* (New York: Science and Society. 1948. Pp. 196. $2.50.)

Published by the editors of *Science and Society* in commemoration of the proclamation of the Communist Manifesto one hundred years ago, this volume is designed to describe "some of the achievements of the pioneers of Marxism" and to illustrate "the range and capacity of the theory, in a way which" the editors "hope will aid the continuing process of explora-

tion." The volume opens with an essay describing the impressions of Marx and Engels on America and contains additional chapters on such topics as "The Ethics of the Communist Manifesto," "The Paradox of Profit," "Engels on the Family," "The Origins of Present-Day Socialism," "Saint Simon's Philosophy of History," "The English Civil War Interpreted by Marx and Engels," "Marx' Doctoral Dissertation," and a concluding chapter on Marx as a mathematician. For a volume designed to illustrate "the range and capacity" of the Marxian theory, it fails significantly to mention any contemporary problems or issues, and to analyze any contemporary, or even recent, political developments in the light of Marxian theory. The Soviet Union is not mentioned at all, although doubtless the editors of *Science and Society* are aware of its existence.

Essentially the volume is a panegyric rather than a critical analysis of Marxian theory. Thus, according to Thomas Kirkenfeld, "the Marxist theory of surplus value . . . clarified the workings of capitalism as a whole; it offered an explanation of the dynamics of capitalist exploitation; it revealed the source of capitalist accumulation; it removed the contention of wages as equal exchanges for labor produced . . . it enables us to explain crises and unemployment . . . and finally indicates that for the productive capacities of man to be used fully in his own interest a new social organization of productive relations is necessary" (p. 41). According to Bernhard J. Stern, Marx and Engels "enriched the ideal of the family and offered designs for living for the development of free and emotionally mature persons" (p. 64). And according to Howard Selsam, "it is no exaggeration to say" that the Communist Manifesto "is the first document in history to achieve any such organic unity of scientific social analysis with ethical ideals. Previous attempts at social science either had sought to eliminate values or had added on, extraneously, values derived from religious or secular traditions. In the first case, no rational guide for action was possible. In the second, the values were divorced from what in fact existed and also from any possible effective program of action" (p. 32). The volume illustrates that dogmatism is not a quality of mind peculiar to ecclesiastics, and that those who are often most vociferous in their denunciation of dogmatism fall readily into the very same error for which they condemn others.

Despite its dogmatism and its eulogistic premises, the volume of essays contains many facts and interpretations that will be of value to the student of Marxian theory. Paul M. Sweezy's chapter on "The Origins of Present Day Socialism" is a case in point. The volume is well documented.

JOHN H. HALLOWELL.

Duke University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

On May 3, 1948, the Supreme Court handed down two momentous decisions in the general field of the constitutionality of racial discrimination. These were in the cases of Shelley v. Kraemer, involving appeals from state courts, and Hurd v. Hodge, involving appeals from the D. C. Court of Appeals. These two groups of cases, commonly referred to as "the restrictive covenant cases," resulted in the invalidation of judicial enforcement of private covenants restricting sale or use of property in terms of race. Anyone wishing to understand the public policy background and broad legal implications of the decisions would be well advised to examine *Prejudice and Property; An Historic Brief Against Racial Covenants* (Washington, D. C.: Public Affairs Press, 1948, pp. 104, $2.00), by Tom C. Clark and Philip B. Perlman. This little volume reproduces, complete with citations and references, the brief which the Attorney-General and the Solicitor-General prepared for submission by the Department of Justice to the Supreme Court as *amicus curiae* in the restrictive covenant cases. The authors discuss the legal nature and social effects of such covenants, resorting to sociological data as well as court precedents to set the stage for the major argument. The central theme of the brief is that judicial enforcement of restrictive covenants, either in the state courts or in the District of Columbia courts, is forbidden by the Constitution, federal legislation, and considerations of public policy. "The Federal Government has a special responsibility for the protection of the fundamental civil rights guaranteed to the people by the Constitution and laws of the United States . . . The Government is of the view that judicial enforcement of racial restrictive covenants on real property is incompatible with the spirit and letter of the Constitution and laws of the United States. It is fundamental that no agency of government should participate in any action which will result in depriving any person of essential rights because of race or color or creed" (p. 22). All the legal precedents are carefully examined, with the conclusion that this precise issue has never before been passed upon by the Court—despite widespread belief that Corrigan v. Buckley foreclosed the question. Moreover, it is argued, enforcement of such contracts would be against public policy as declared in statutes, executive pronouncements, and international agreements. Each of the major lines of argument is supported by persuasive references, both legal and non-legal. And while it is impossible to know how much weight the Court gave to any particular brief, it is worth noting that Chief Justice Vinson, in a 6-0 opinion in each group of cases, accepted the major contentions. The Court held that "in granting judicial enforcement of the

restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws . . . " In the D. C. case, the Court ruled that enforcement of such covenants is prohibited by the Federal Civil Rights Act, and that, even in the absence of such a statute, "enforcement of restrictive covenants in these cases is judicial action contrary to the public policy of the United States, and as such should be corrected by this Court . . . " Whether or not all of the somewhat broader arguments urged in the brief have been or will be accepted by the Court will have to await further litigation. In any event, however, these decisions stand as an important tribute to the Department of Justice brief in the cases, and cannot be fully understood or appreciated without reference to that unusual document.—VINCENT M. BARNETT, JR.

In his *Missouri and the World War, 1914-1917; A Study in Public Opinion* (University of Missouri Studies, Vol. XXI, No. 3, 1947, pp. 199, $2.50), John Clark Crighton endeavors to present, on the basis of a fairly intensive study of certain phases of public opinion within one state, "an analysis and interpretation of Middle Western opinion regarding the issues of World War I, up to the date of America's intervention," Mr. Crighton states that Missouri, from a number of standpoints, is "typically Middle Western"; but neglects to delineate the boundaries of the Midwest. Possibly to him, as to many others, the Midwest is as much a state of mind as a geographic expression. In his opening chapter, Mr. Crighton provides the reader with various basic demographic, economic, political, and governmental, historical data, as well as with an informative survey of the Missouri press prior to the period covered by the study. Relying chiefly upon selected editorial comments from St. Louis, Kansas City, and various small-town newspapers, Mr. Crighton traces the development of opinion, mainly that of the press, in Missouri, from the outbreak of World War I in 1914 to the entry of the United States in 1917. In the course of this development, there is some discussion of the economic effects of the war on Missouri, the reaction of the press and of various organizations to the violation by Great Britain and by Germany of the neutral rights of the United States, the preparedness campaign, and the presidential campaign and election of 1916. It is interesting to note that as the war progressed a large section of the press, similar to numerous newspapers before World War II and today, began talking in terms of adequate defense and vital interests and the responsibility of the United States for the protection of democracy and of humanity. The author apparently assumes, and correctly so, that there was a close correlation between editorial opinion and public attitudes, although he makes no attempt to examine the interaction between press and public. The amount of space allotted in the news columns to war news and the manner in which "straight" war news was

treated by the press, with respect to headlines and position, were beyond the scope of the study. It is suggested that "the rôle of propaganda in getting the United States into the war has perhaps been exaggerated" and that more important were the "close racial and cultural ties" between the Allies and the United States and "the further fact that their [the Allies'] interpretation of the threat to the world of German militarism coincided with that held by most Americans." The author demonstrates that close ties existed between German-language groups in Missouri and the Fatherland, but adduces no evidence which would support his conclusions respecting the existence and significance of "close racial and cultural ties" between the Allies and the United States. Mr. Crighton probably underestimates the influence of Allied propaganda in creating an awareness in the United States of German militarism and of methods used by the Central Powers in conducting the war. More important, however, the author believes that his study suggests "the possibility that the pacifism and isolationism of Missouri, and of the Middle West generally, have perhaps been over-estimated." This conclusion was reached on the basis of the fact that during the period of the study isolationism "was distinctly a minority expression in Missouri," and that on the declaration of war by Congress in 1917 "Missouri's reaction was thoroughly American." With respect to minor matters, the reviewer objects to the use, especially in a scholarly dissertation, of the expression that "many Germans . . . were naturally a gregarious and socially-minded people" and the reference to the Germans and Irish as "two of the strongest racial groups in the United States." And here in southern Arizona, not far north of the Mexican boundary, one is aware that the term "American," which is generally used throughout the study, encompasses a great deal of territory.—Paul Kelso.

Although scuttled by the late Congress, federal aid to education is certain to remain a primary political issue until it becomes law. The offset edition of Charles A. Quattlebaum's *Federal Aid to Elementary and Secondary Education* (Public Administration Service, 1948, pp. xii, 191, $2.00) is therefore timely. The author, educational specialist of the Legislative Reference Service, originally prepared the study for Subcommittee No. 1 of the House Committee on Education and Labor. The volume has certain limitations of scope. It does not pretend to be fully analytical. Half of it summarizes various extensive reports that have been made on federal aid to education; listing of arguments pro and con and some background data complete the study. The digest of recommendations of Congressional, other governmental, and non-governmental groups is quite extensive and complete. It is true that almost all of the reports cited are favorable to federal aid, but this is simply a reflection of the fact that vir-

tually all extensive studies of the topic have come to a similar conclusion. Federal aid to education is a good example of Congress not leading but being pushed. The statistical data presented on state finances and state school systems are largely from the Governments Division of the Bureau of the Census, the United States Office of Education, and the National Education Association. Although not new, these data are used together to advantage. If it is objected that the effect is to support proponents of federal aid, the answer must be that apparently the most reliable statistics do so. Finally, there is a debate handbook-type summary of arguments for and against the proposition. The pro and con sections are not only equal in length, but also written with equal fervor and completeness. One does not expect the issue of individualism versus the public service state to be raised directly in a report of the Legislative Reference Service, but the arguments advanced come fairly close to doing even that. It is unfortunate that more attention could not have been paid to the religious issue involved. Notable by its virtual absence is mention of the effect S. 472 would have in pegging educational expenditures of all the states. Within the limitations the report sets for itself, it is a very creditable piece of work. —EDWARD W. WEIDNER.

In *State Control of Business Through Certificates of Convenience and Necessity* (Bureau of Government Research, Department of Government, Indiana University, 1948, pp. 154), Ford P. Hall presents a major contribution to the study of state regulation of business. As in his earlier work, *Concept of Public Business* (reviewed in this REVIEW, Dec., 1941, p. 1189), Professor Hall treats of legal and administrative problems rather than economic factors. The same comprehensive and critical evaluation of statutes and court decisions which characterized the earlier study is found in this one. Among the questions which Professor Hall considers are: For what purposes are certificates of convenience and necessity issued? Are such certificates property? Are they merely a franchise? Or a contract? Has the constitutionality of state statutes requiring certificates been upheld? How are extensions and changes made in the certificate? What factors are considered in issuing certificates? Can certificates be used as a planning device? The states issue certificates of convenience and necessity to public utilities, including railroads, street railways, and common carriers by motor bus or truck. The certificate is a revocable license to serve the public for a limited period of time. Such certificates were first used in 1892, when the New York legislature required them of railroad corporations which were planning the construction of new railroads. Every state except Delaware has statutes requiring certain kinds of utilities to obtain certification. These state statutes, with their accompanying court cases and utility commission decisions—some 2,400 in all—were

basic materials from which Professor Hall drew methods, principles, and objectives of state regulation.—EDWARD W. CARTER.

During recent years, increasing use has been made in the public service of lay boards for advisory and administrative purposes. In her *Citizen Participation in Government; A Study of County Welfare Boards* (Public Affairs Press, 1948, pp. viii, 63, $1.00), Helen E. Martz presents an analysis and evaluation of the operation of county boards of public assistance in seventeen counties of an unidentified state, together with some comparative data from other states. The county boards studied are unpaid, state-appointed agencies charged with administering, under the supervision of a state board, programs of general and categorical assistance. The greatest potential value of citizen boards seems to lie in their usefulness in reflecting popular attitudes and in interpreting service programs to the public. The boards studied appear to have been quite effective in performing the first of these functions; and, though they were less successful with respect to the second, this may have been due to failure of the state supervisory agency to provide proper leadership. The fact that citizen boards are not well adapted to making technical decisions should not be permitted to obscure their usefulness in interpreting programs to the public and bringing popular influence to bear upon administration. Such lay participation in government represents a type of "mature citizenship" which, the author believes, should be encouraged as beneficial alike to board members and the general public.—CLYDE F. SNIDER.

The Palmer Raids (International Publishers, 1948, pp. 80, $1.25), edited by Robert W. Dunn, is one of those numerous volumes which has —as Charles A. Beard commented recently before the American Political Science Association—" 'the correct answers' rendered implicit, if not explicit, by the very terms of the respective formulations." In short, the authors—the volume indicates that it was prepared by some one in the Labor Research Association—have an ax to grind in this brief study of Attorney-General Palmer's Red Scare of the early twenties. There is little reason to question most of the individual facts presented. However, when one reads the introductory statements—"This pamphlet is a factual, carefully documented account of one of the most scandalous episodes in American history. It is a report on one of the tactics used by reaction against progressive movements after World War I"—one really knows what interpretation "must" follow. As political science, *The Palmer Raids* is not science under any conceivable definition. As reasonably objective history, it is not much better. As a political tract, aimed at influencing action toward a preconceived goal, it is first rate. No doubt those who are especially interested in civil rights will find the pamphlet to their liking,

and perhaps will accept its assumptions without question. Even political scientists and historians looking for facts about the episode will find some good material. But, on the whole, the reviewer sometimes wishes that more history were written to tell what happened than to "prove" an author's ethical views.—PAUL P. VAN RIPER.

Only one life stands between the vice-president of the United States and the presidency, but most of our vice-presidents have been consigned to oblivion as soon as they have been elected. Consequently, information about some of them is quite limited, and Klyde Young and Lamar Middleton have rendered a useful service by presenting in *Heirs Apparent* (Prentice-Hall, Inc., 1948, pp. vi, 314, $3.75) a short essay about each of the vice-presidents. The authors lay no claim to having produced a scholarly work containing newly discovered facts about any of the vice-presidents. Not a single statement is footnoted, and only a very limited bibliography is presented. The essays are interestingly written, however, and the book must be considered of value to the extent that it directs greater attention to the neglected office of vice-president.—CHRISTIAN L. LARSEN.

The Florida Sheriff's Manual (Institute of Government, 1947, pp. xi, 324, $2.50) seeks to bring together all of the information needed in law enforcement work in that state. The manual is a condensation of the constitutional provisions, legislative enactments, opinions of the attorney-general, and judicial decisions which affect the office of sheriff. To this material have been added practices drawn from the accumulated experience and customs of sheriffs and information concerning technical services available for crime detection from other agencies, state and federal. The guide-book is made available for ready reference by dividing the duties and functions of sheriffs into chapters, main divisions, and finally detailed topical paragraphs. A subject-matter index facilitates the ease with which the specific items may be located. The Institute of Government has made a sound beginning toward its objective of providing basic information for the county officers of Florida.—ROBERT B. HIGHSAW.

FOREIGN GOVERNMENT AND POLITICS

The Civil Administration Division of the Office of Military Government of the United States in Germany (OMGUS) deserves substantial commendation for bringing together the constitutions of the new German states in *Constitutions of the German Laender* (Office of Military Government (U. S.), Berlin, 1947, pp. 243). Earlier publications have made available the constitutions in the American Zone, but here students of German political affairs will find the full texts in both German and English (arranged in parallel columns) of the constitutions of all of the states in the

American, French, and Russian Zones. Only the constitutions of the states in the British Zone are lacking, because of the delay in drafting constitutions in that zone. The editing of this volume has been expertly done, and the English translations seem adequate. Brief prefaces which present a background for the constitutions of the three zones, giving the steps leading up to drafting and promulgation, are included. In the case of the American Zone, an OMGUS paper commenting on the relationships between military government and civil government following the adoption of the constitutions is reproduced. For the benefit of those not familiar with German terms, a brief glossary is appended. Finally, the volume is made more readily usable by the addition of a detailed index. Perfectionists will regret that the constitutions of all of the *Laender* are not presented. However, this collection represents so great an advance over what has been available heretofore, and is so convenient a source of information for those who have occasion to refer to constitutional developments in Germany, that it calls for an expression of hearty appreciation.—HAROLD ZINK.

The criterion for judging the qualities of books of readings is generally fixed by the author's statement of his objectives in the preface. In her *Readings in British Government* (University of Toronto Press—Saunders, 1948, pp. xxiii, 443, $5.25), Elisabeth Wallace, as editor, undertakes to collect in convenient form material from out-of-print studies, periodical articles, and an occasional passage from Hansard to illuminate major aspects of British government. Her most significant purposeful omission is any selection describing governmental changes since 1945, on the ground that contemporary estimates of the present great changes must necessarily lack perspective. Within her predetermined framework, the author has selected stimulating material from the writings of W. Ivor Jennings, A. B. Keith, W. A. Robson, James K. Pollock, and others, dealing with the party system, the legislature, the executive, and local government. A useful brief bibliography has been appended.—EDWARD G. LEWIS.

Very little has been written on the position of labor in the separate countries of Southeastern Asia, and still less has appeared which deals in a comprehensive way with the whole region. A long-felt want is supplied by Virginia Thompson's *Labor Problems in Southeast Asia* (Yale University Press, 1947, pp. xviii, 283, $4.00). Before the war, Miss Thompson had written several detailed studies of French Indo-China and other parts of the area, and she spent six months there in 1947 studying the postwar situation. The result is a detailed description of labor conditions in Burma, Malaya, the Dutch East Indies, Siam, and French Indo-China. The book covers the prewar as well as the postwar period. It deals with all types of

labor—on the plantations, in mines, factories, retail trade, and to some extent with clerical labor. There is a good deal of information about the indigenous peasant farmers and agricultural laborers. Miss Thompson describes the methods of recruitment of local and Indian, Chinese, and Javanese immigrant labor; the types of employment; working conditions, including wages, hours, health, and housing; government protection of labor; trade unionism; and developments since 1945. There is much valuable information on the stranglehold which the money-lender, indigenous, Chinese, and Indian, has on the peasant farmer. Adequate farm credit on reasonable terms is one of the outstanding needs of the whole area. One great difficulty is that it is very difficult to help the natives because of their thriftlessness and lack of a money sense. In Java, Annam, and to some extent Burma, the pressure of population on the land has gone so far that it has compelled some of the natives to seek work on the plantations. Apart from this, the labor for foreign enterprises is principally supplied by immigrants from China and India. The salient feature since the war has been the development of trade unions, particularly in Malaya and Burma, where the British government appointed officials of the British trade unions to assist in the organization. Many of these unions are dominated by Communists, and their frequent strikes are motivated by political rather than economic aims.—LENNOX A. MILLS.

INTERNATIONAL LAW AND RELATIONS

In *International Relations between the Two World Wars, 1919–1939* (London: Macmillan and Co., 1947, pp. 303, $2.25), Professor E. H. Carr has revised and expanded his publication of ten years ago on the same general subject. As a former member of the British diplomatic service and at present professor of international politics at the University of Wales, the author is exceptionally well qualified to write a distinctive work in this somewhat overcrowded field. Carr divides his study into the following parts: the period of enforcement and alliances (1920–24); the period of pacification and the League of Nations (1924–30); the period of crisis and the return of power politics (1930–33); and the re-emergence of Germany and the end of the treaties (1933–39). The point of view of the author is primarily European and secondarily British. His references to developments in the Far East, for example, are almost entirely in terms of events in Europe, and he omits almost all discussion of Latin American affairs. Thus the Far East merits one chapter of twenty-one pages, while under the heading of "The Non-European World" he groups in twenty-five pages events relating to the Middle East, the Western Hemisphere, the British Commonwealth, and a few additional comments on Japanese expansion. In contrast with the encyclopedic volumes which serve as textbooks for classes studying this period, Carr's work is brief and com-

pact. Like many of the better English writers, moreover, his style is refreshingly uncluttered, and since he is a master of understatement, his generalizations ring true. As a result, Carr has produced a volume of superior craftmanship.—WINIFRED N. HADSEL.

In 1939, Joseph S. Roucek published *The Politics of the Balkans* as a volume in the McGraw-Hill Studies in Political Science edited by Fritz Morstein Marx. He now has slightly revised the text of the useful volume, brought it down to date through additional sections to each chapter, and added an excellent series of maps; and the book now appears in the distinguished list of Stanford Books on World Politics as *Balkan Politics; International Relations in No Man's Land* (Stanford University Press, 1948, pp. xii, 298, $3.50). In this edition, Professor Roucek strikes at a more general audience. He has inserted more sweeping generalizations in the new sections, some of them not too happy. No doubt intended as "shockers," such statements as the following add little, particularly when inserted among much sober and sound history: "Until after World War I, vermin filled even the big hotels; tips (baksheesh) were—and still are—compulsory to get a locomotive engineer to drive his train, a stationmaster to pass a train through. Statesmen were pickpockets." He speculates at length on why King Boris signed the Tripartite Pact, but fails to mention that the alternative was a Russian pact such as the Baltic states had signed. Considering the fate of bourgeois and royal statesmen who tried to deal with Russia, perhaps Boris might be credited with taking a gambler's chance on the only possibility of retaining his throne. If exception is taken to some of the generalizations, it should be added that many observations are very acute. In several places it is not clear whether terms such as "postwar years" refer to the First or Second World War. Often the author gets ahead of his story and then returns to pick up essential points. Thus he describes Rumania's participation in the Russian campaign before the signature of the Tripartite Pact (p. 242). There are instances of ambiguous and awkward sentences which might lead to misunderstanding on the part of the reader, notably such as the statement (p. 268) which seems to imply a British-French alliance with Yugoslavia in October, 1939, or the reference to the Montreux Pact of 1936 (p. 287). A number of typographical errors have crept in, such as 1908 for 1910 on the proclamation of the Montenegrin kingdom (p. 83) and September 12 for September 5 on Russia's declaration of war on Bulgaria (p. 65). Few books pack so much information on the Balkans as this volume contains. I prefer the older sections to the newer additions, but these too gather together much scattered material. Of real value are the footnotes, which, in addition to the list of chapter references, are a bibliographical mine.—E. C. HELMREICH.

Lawrence H. Chamberlain and Richard C. Snyder, in preparing *American Foreign Policy* (Rinehart and Co., 1948, pp. xiv, 826, $5.00), have rendered a signal service to the college student and teacher of American foreign policy. For the most part, the book, which is designed to serve as a text for an introductory course in the subject, consists of, on the whole, well selected readings supplemented by connecting material, and in some few cases, most particularly in Part II, brief essays written by the editors. Part I well might be entitled "The Formulation and Execution of American Foreign Policy," and Part II, "The Content of American Foreign Policy." Generally speaking, the selections are provocative of thinking and are sufficient in length and in number to give a general acquaintance with the subject to which they refer. While it is easy for any one to find fault with the selection of material in a book of this type, it would seem that within the limitations of space and purpose the editors have substantially accomplished their announced intention "to provide the student with sufficient information and with such interpretations as are necessary for an understanding of what the foreign policy (or policies) of the United States is and why. . . . " The reviewer, in approaching the same task, might have given more attention to the problems of the basic nature of power politics, to the questions of dollar and oil diplomacy, to the problems of the Western Hemisphere, and to the rôle of conflicting ideologies in the present struggle between East and West. However, if there are deficiencies at these points, they can easily be filled in by the competent instructor in any course for which the book may be chosen as a text. Such courses should be many.—HAROLD F. SYLVESTER.

The Control of Alien Enemy Property (New York: Central Book Co., 1947, pp. viii, 334), by Martin Domke, is a supplement to the same author's larger work entitled *Trading with the Enemy in World War II*, published in 1943,[2] to which there are page references. The title of the present volume seems too narrow, since other matters besides property receive attention, e.g. internment, military service, denaturalization, and judicial remedies of aliens. Some related matters are, however, noted by the author as being outside the scope of the book (pp. 104, 131, 138). Dr. Domke has brought together an extremely useful collection of material, comprising principally holdings of courts in the United States and other countries, but including also bibliographical items and references to hearings as well as to statements and reports of executive civilian and military agencies. He does not at many points insert his own value judgments or opinions, although in exceptional cases (as at pp. 100, 142, 315) he considers critically rulings and comments on rulings or in policy. There

[2] See this REVIEW, Vol. 38, pp. 392 (Apr., 1944).

are some deductions from court decisions (as at p. 155), and on the subject of exchange control there is some anticipation of future development (p. 206). There are occasional references, in quotations, to international law as having bearing upon legal questions raised (as at pp. 10, 80, 195). As to the policy which the United States will ultimately adopt with respect to the treatment of private property of enemy aliens, Dr. Domke regards the question of return of such property as "at this writing, not of decisive importance" (p. 175), but properly emphasizes that the final decision on policy will rest with Congress. In appendices are texts of certain statutes and regulations (to bring the earlier publication to date) and the text of Parts VI and VII and Appendices XV–XVII of the peace treaty with Italy. There are also a bibliography, a table of cases, and an index.—ROBERT R. WILSON.

Discussion of *The Major Aspects of International Politics* (Grinnell, Iowa: Grinnell College, 1948, pp. 163, $2.50) in 163 pages would appear at first glance an overly-ambitious venture. However, the essays comprising this small book were originally lectures delivered by a group of five scholars from several colleges for the Grinnell College Institute of International Affairs in the summer of 1947. They were obviously intended to give those attending the conference a rapid survey of world affairs as of that date and did not pretend to depth or startling originality of analysis. The approach was an interesting one. Instead of confining discussion to the more theoretical aspects of international relations, such as world trade or power politics, the first four essays deal with countries the behavior of which tends to have a determinative effect on world events: Latin America by Professor Fletcher of Knox College, China by Professor Godshall of Lehigh University, Russia and Great Britain respectively by Professors Dunner and Norton of Grinnell College. It is only in the final essay by Professor Zurcher of New York University that world organization *per se* is considered, and he seems to express the thesis of the conference by emphasizing that world government can be established only after a world community exists, and the world community can come into being only when the peoples of all countries know about and understand each other. This book will, because of its inevitable superficiality, be more useful to the lay reader than to the trained student of international affairs. However, because of its very comprehensiveness in brief space, it should find wide popularity in groups such as international relations clubs where much is to be accomplished in a short space of time.—BEATRICE MCCOWN MATTISON.

Students of the Arab world will welcome the appearance of Doreen Warriner's *Land and Poverty in the Middle East* (Royal Institute of Inter-

national Affairs, 1948, pp. vii, 149, $2.50). Miss Warriner's study is the first of a series on economic conditions of the Middle East to be published by the Royal Institute. She includes in her survey Egypt, Palestine, Transjordan, Syria, Lebanon, and Iraq. This pleasantly readable book is a rare novelty in the field of Middle Eastern economics, as the materials hitherto available have dealt mainly with Palestine and have usually been limited to official British reports and Zionist publications. The latter, devoted to the study of Palestine's absorptive capacity, are, of course, not entirely free from political slant. In contrast, Miss Warriner has no axe to grind. Her conclusions are not likely to please a militant Zionist or an Egyptian pasha. They are: first, that the Arab countries are generally over-populated in relation to the capacity of their agriculture; second, that there is a vast area for improvement. The latter may be accomplished by better planning and by a substantial change in the antiquated system of land tenure. The author has kind words for Jewish agricultural progress in Palestine. She warns, however, against the over-simplified theory that good will and scientific methods may bring about similar beneficial changes in Arab agriculture. The Zionist agricultural experiment, according to the author, is based on heavy financial aid from abroad, inspired by ideological rather than profit motives. It is not likely that the Arab peasantry will ever expect similar investments in their own agriculture.—GEORGE LENCZOWSKI.

An obscure chapter of American foreign policy with respect to the Monroe Doctrine, including our proffers of mediation to prevent and terminate a war among three of the American Republics, is revealed in Herbert Millington's *American Diplomacy and the War of the Pacific* (Columbia University Press, 1948, pp. 172, $2.50). Among the more obvious of several tragic errors was the championing, by our diplomats, of the protagonists in the boundary and claims disputes between Chile, Peru, and Bolivia. One United States minister, a former Civil War general, initiated and completed arrangements for a United States naval base in Peru, without any authorization to do so. The offender was reprimanded by Secretary of State Blaine. Chile's victories of 1879–82 achieved her war aims, enabling her to expand northward through rich nitrate areas. Bolivia was denied access to Pacific ports. Peru also lost territory by the final treaty of Ancon of 1883. Throughout, there was an undertone of skullduggery by nitrates concessionaires. Mr. Millington embellishes this sorry tale with gleanings from the contemporary press of the United States, Great Britain, and Latin America. The monograph, in the Columbia University Studies in History, Economics, and Public Law, is amply documented by a painstaking scholar whose conclusion is simple: "One of the lost opportunities in our diplomatic history."—WILLARD F. BARBER.

It is the thesis of *International Migration and One World* (National Committee on Immigration Policy, 1948, pp. 107) that the United States has not assumed the rôle on solving the problem of displaced persons and refugees that its resources and world position would indicate. This is the third of a series of reports by the committee, the first two having dealt with the economic aspects of immigration and immigration in relation to population policy. This monograph sketches the development of immigration policies in the principal nations largely settled by immigrants and summarizes the results up to 1947. It reviews the changes in immigration and emigration policies of the principal European and American nations as a result of World War II and places these data alongside the projections of total population of these nations within the next twenty years done by Notestein and others for the League of Nations. The monograph is cogently written and should serve well to help enlighten both the public and its legislators on the immigration question.—WILLIAM J. RONAN.

POLITICAL THEORY AND MISCELLANEOUS

Those who feel that Hume's thought has been given less attention than it deserves in the history of political theory will especially welcome *Hume's Moral and Political Philosophy* (Hafner Publishing Co., 1948, pp. li, 388, $3.50, paper $1.75), edited by Henry D. Aiken. Reprinted are selections from *Essays Moral and Political,* Book III and relevant sections of Book II of the *Treatise of Human Nature,* and the entire text of the *Enquiry Concerning the Principles of Morals.* The book's title is appropriate enough in that Hume's economic and historical work is largely omitted and a group of his political writings and the moral tracts upon which they are based is offered. However, this is not a full presentation of the Scottish thinker's political theory. Such essays as "Of the Independency of Parliament," "Of Parties in General," and "Of the Balance of Power" are not to be found. Professor Aiken's thorough introduction is well reasoned. It effectively points up the organic relationship between Hume's political thought and his premises regarding human nature. Since these last are the foundation of much of modern theory, the editor and publisher have performed a service in the new edition. This is the third volume of the Hafner Library of Classics, which includes Rousseau's *The Social Contract* and Locke's *Two Treatises of Government.* It would be well if other volumes now in preparation were to provide more adequate indexing for reference purposes than does the present work.—D. MACKENZIE BROWN.

As former chairman of the F.E.P.C., Malcolm Ross, author of *All Manner of Men* (Reynal and Hitchcock, 1948, pp. 314, $3.50), is in a position to give a clear and concise analysis and evaluation of the factors

impeding a full realization of full economic opportunity for all manner of men of all races, creeds, colors, and national origins. This volume is a genuine contribution in the field of race relations. It is equally interesting to the layman and the specialist. The author attempts a critical evaluation of the whole practice of discrimination, chiefly economic, in the United States from the colonial period to the present. Mr. Ross is of the opinion that people in the United States have always been plagued by intolerance and prejudice against certain racial and religious minorities. We have never been consistent in our racial and religious attitudes, and prejudice has obscured our vision and progress. Thus the North criticized the South for its continuance of slavery, but was not willing to admit the Negro to industry on a footing of equality with the white man. The F.E.P.C. was unpopular from the day of its inception because it had to fight prejudice both of individuals and of labor unions. It accomplished results only because of the insistent demands of war production. The author tends to place too much faith in the capacity of a peace-time F.E.P.C. to solve the problems of prejudice and discrimination in our economic structure. While undoubtedly a national agency such as this would achieve much, it does not offer the final panacea. The Supreme Court of the United States has done, and is doing, its part in pointing the way to a solution of both economic and social prejudice. Expressing the difficulty in the question of segregation of Negroes, the Court maintained (Plessy v. Ferguson, 163 U. S. 37, 1896) that feeling against social segregation cannot be legislated away by a court of law, because it is imbedded in local custom; but by 1917 the Court stated that "the attempt to prevent alienation of property to a person of color is not a legitimate exercise of the police power of the state and violates the Fourteenth Amendment, preventing state interference with property rights without due process of law. On May 4, 1948, the Court brought this theory to its logical conclusion when it decided that restrictive real-estate covenants directed against Negroes are a violation of due process and are not enforceable through either the federal or state courts.—ELIZABETH A. WEBER.

Planning the Neighborhood (Public Administration Service, 1948, pp. x, 90, $2.50), by the American Public Health Association Committee on the Hygiene of Housing, deals with the physical setting in which homes should be located. Neighborhood, as used in the study is, in general, the area served by an elementary school. Certain basic health criteria which should guide the planning of residential neighborhood environment are presented and recommendations made for the selection of sites and for their development. Among the subjects considered are the development of land, utilities, and services, the provision of neighborhood community facilities, vehicular and pedestrian circulation, and neighborhood density

control. The test applied for an adequate environment is whether it supplies reasonable protection to health. The study is not a manual of design, but rather a formulation of principles and standards. It should be helpful to the technician and also to the non-technical policy-maker, to practitioners of architecture and site-planning, to planning commissions and zoning boards, to real estate developers, to large-scale investors and lending institutions, to governmental authorities responsible for home construction or for making loans for such construction, to agencies responsible for various aspects of housing and neighborhood development, and to all organizations and citizens interested in standards for healthful housing. The coöperation of many groups will be required to bring about the results sought by the committee, and it has directed this study to these many groups. Four appendices covering a glossary of housing terms, a table of potential nuisances and hazards, organizations and facilities which may supply neighborhood services, and a selected bibliography add to the value of the study. Two companion volumes now in preparation by the committee are *Planning the Home for Occupancy* and *Construction and Equipment of the Home.*—CHARLES M. KNEIER.

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AMERICAN GOVERNMENT AND PUBLIC LAW

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3117. Havana charter for an international trade organization, March 24, 1948. 77 p.
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3150. United Nations conference on freedom of information, Geneva, March 23–April 21, 1948. Report of the United States delegates, with related documents. 45 p.
3159. Strengthening the United Nations. Statement by George C. Marshall . . . 10 p.
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